

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

June 21, 2001

The regular meeting of the Wichita-Sedgwick Metropolitan Area Planning Commission was held Thursday, June 21, 2001 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Jerry Michaelis, Acting Chair; James Barfield (late arrival); Elizabeth Bishop; Kerry Coulter (late arrival); Frank Garofalo; Bud Hentzen; Bill Johnson; Ron Marnell; John W. McKay, Jr., George Platt; Harold Warner (late arrival); and Ray Warren; David Wells (ex-officio); Dorman Blake and Richard Lopez were not present. Staff members present were Marvin Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner, Scott Knebel, Senior Planner; Bill Longnecker, Senior Planner; and Karen Wolf, Recording Secretary.

1. Approval of Minutes for May 10, 2001 and May 24, 2001

GAROFALO "On the May 10 minutes, on Page 65, I don't see a vote for that case. I see the motion, and the second, but not the vote."

MICHAELIS "All right. If anybody has any other individual changes, you can give them to the secretary."

MOTION: That the minutes of May 10, 2001, be approved as amended, and that the minutes of May 24, 2001 be approved as amended.

MCKAY moved, **JOHNSON** seconded the motion, and it carried unanimously."

MICHAELIS "We need to pull Item 2/3. Are there any others that we need to look at individually? Is there anyone here to speak on any of the subdivision items 2/1 through 2/5?"

2. Subdivision Committee items 2/1, 2/2, 2/3, 2/4 and 2/5 were approved subject to the Subdivision Committee recommendations. **GAROFALO** moved, **BISHOP** seconded the motion, and it carried unanimously (9-0).

2/1. SUB2001-16 – One-step final plat of J AND D ADDITION, located on the north side of MacArthur, east of West Street.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Due to the size of the site, approval will be needed for the use of septic systems.
- B. City Engineering requests petitions for the future extensions of municipal water and sanitary sewer.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. County Engineering needs to comment on the status of the applicant's drainage plan. The Revised Master Drainage Plan needs to be reviewed before release of the plat for recording.
- E. An access opening along MacArthur shall be permitted contingent upon its closure when the internal street is constructed, and shall be referenced on the plat.
- F. The Applicant shall submit a restrictive covenant tying the lots together and limiting the site to one dwelling unit until the property is annexed by the City of Wichita and municipal water and sanitary sewer services become available. Additional development shall be prohibited until adjoining off-site right-of-way is obtained and a petition for paving is provided.
- G. The driveway shall be in accordance with County Fire Department specifications.
- H. On the final plat tracing, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".

- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/2. SUB2001-51 – Final Plat; Preliminary Plat of OVERVIEW HILLS ADDITION, located on the southeast corner of 31st Street South and 135th Street West.

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently served by Rural Water District No. 4. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter to MAPD and Health Department from the water district to that effect.
- C. City Water and Sewer Department has required a petition for future extension of City water and sanitary sewer services.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. The removal or modification of any terraces or drop structures on the site needs to be coordinated with NRCS. A Master Drainage Plan needs to be submitted.

- F. County Engineering needs to comment on the access controls. The plat proposes two access openings along 31st St. South, and two openings along 135th St. West, including one joint opening. The access controls are approved. The 40-ft joint access opening shall be specified.
- G. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- H. The applicant shall guarantee the installation of the proposed streets to the 36-ft rock suburban street standard.
- I. On the final plat tracing, the contingent dedication of street right-of-way needs to be referenced in the plat's text as becoming effective upon the platting of any adjacent subdivision having a street connecting thereto.
- J. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lots 6, 7, 8, and 11. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. The Subdivision Committee has approved the modification.
- K. The County Fire Department needs to comment on the plat's street names. County Fire Department has recommended 31st Court South.
- L. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- M. Lot 11 may not meet the 100-ft lot width requirement which is measured at the building setback line. This dimension should be denoted on the final plat. An increase in the distance of the building setback from the road would meet the standard. The building setback has been increased to 40 feet.
- N. In the surveyor's certificate and the plat's text, the word "estates" needs to be removed.
- O. The centerline of 31st Street Court needs to be located along 31st St. South.
- P. The location and elevation of permanent on-site Bench Mark needs to be added.
- Q. The plat's text should be corrected to specify "an Addition to ...".
- R. The Planning Commission Certificate needs to have "Kansas" removed from over the word "Sedgwick" and added after the word "Wichita" at the end.
- S. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- T. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- V. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department

of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- Y. Perimeter closure computations shall be submitted with the final plat tracing.
- Z. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- AA. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- BB. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

- 2/4. DED2001-15** – Dedication of Access Control from SK&M Properties, for properties located on the north side of 13th street, west of High Street.

OWNER/APPLICANT: SK&M Properties, C/O John W. Siedhoff, 3580 W. 13th Street, Wichita, KS
67203-4562

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. L/S-0792 and is being dedicated for access control along 13th Street.

Planning Staff recommends that the Dedication be accepted.

- 2/5. DED2001-16** -- Dedication of Street Right-of-Way from SK&M Properties, for property located on the north side of 13th Street, west of High Street.

OWNER/APPLICANT: SK&M Properties, C/O John W. Siedhoff, 3580 W. 13th Street, Wichita, KS
67203-4562

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. L/S-0792 and is being dedicated for 10 feet of street right-of-way along 13th Street.

Planning Staff recommends that the Dedication be accepted.

Item taken out of order:

- 2/3. SUB2000-88** – Final Plat; Preliminary Plat for RIO VISTA ESTATES FOURTH ADDITION, located on the northwest corner of 61st Street North and Meridian.

- A. As this site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation. Upon annexation, the property will be zoned SF-6, Single-Family Residential.
- B. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. Standard soil testing is required. A drainage plan is requested.
- C. The Applicant shall guarantee the extension of City water to serve the lots being platted.
- D. City Engineering needs to comment on the need for any guarantees or easements. No additional guarantees are required.
- E. City Engineering needs to indicate if petitions for future extensions of sewer services need to be provided. A petition for future extension of sanitary sewer services is requested.
- F. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.

- G. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A drainage guarantee is required. Utility and drainage easements need to be labeled.
- H. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- I. The Applicant shall guarantee the paving of the proposed interior streets in addition to paved access of 61st St. North between the nearest paved segment and the entrance to the subdivision.
- J. City Fire Department needs to comment on the street names. The street names are acceptable.
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities. Prior to the MAPC meeting, the Applicant shall meet with County Engineering to review maintenance of the reserve and determine the need for a restrictive covenant.
- L. For those reserves being platted for floodway purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the floodway reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body. Prior to the MAPC meeting, the Applicant shall meet with County Engineering to review maintenance of the reserve and determine the need for a restrictive covenant.
- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- W. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MICHAELIS "This item is to be deferred for two weeks as per the applicant."

KROUT "Lets have Neil just briefly tell you what you should expect on this."

STRAHL "This needs to be deferred for two weeks at the request of the applicant. There are really two issues involved with this. One was the groundwater issue pursuant to our Subdivision meeting. Staff received a letter from Mike Deely of the Equus Beds Groundwater Management District relaying his objection to the plat on potential contamination of ground water. We received that after the Subdivision meeting, so we provided you with a copy of that today.

The other issue was the reserves. There was some question at the Subdivision meeting as to the maintenance of those reserves and the possibility of not meeting the typical restrictive covenant that we typically would ask for. The applicant has not had the opportunity to meet with County Engineering to resolve. They will do that within the next two weeks and we will reconsider the request at that time."

Coulter arrived at the meeting at 1:35 p.m.

MICHAELIS "Are there any questions of staff on that? Okay, thank you, Neil."

Warner arrived at the meeting at 1:37 p.m.

MOTION: That the item be deferred for two weeks.

GAROFALO moved, **JOHNSON** seconded the motion, and it carried unanimously (9-0).

JERRY MICHAELIS, Acting Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

I would like to remind the members of the Planning Commission that our bylaws require you to disclose any ex-parte contacts that you may have had regarding any of the applications on today's agenda. So I would ask you to please remember to disclose the nature of any such contacts you have had before we open the hearing on each case, and what if any impact that information may have on your opinion of the request.

KROUT "I just want to mention that we have a new Planning Commissioner who is here. Not voting, but will be participating in the meeting. He will be voting after July 1, which we just learned from the City Attorney. He is

Dave Wells, who was appointed by Council member Brewer. Also, this is Dr. Platt's last meeting of his term, which will end on July 1. We are really sorry to lose him."

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- 3/1. **VAC2001-00020** – Elliot and Debra Werbin request to vacate a portion of a 30-ft. side yard set back and a 16-foot utility easement.

LEGAL DESCRIPTION: Setback vacation request;
The north 32-ft of the south 37-ft of the east 25-ft of the east 30-ft of Lot 5, Block Q, 5th Addition, The Village, Wichita Sedgwick County, Kansas.
Easement vacation request;
The north 3-ft of the south 8-ft of the west 30-ft of the east 35-ft of Lot 5, Block Q, 5th Addition, The Village, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located northwest of the Kellogg – Woodlawn intersection

REASON FOR REQUEST: The applicant proposes to build a detached 30-ft x 32-ft garage.

CURRENT ZONING: Subject property is zoned SF-5 Single Family Residential. Properties to the north, south and west are zoned SF-5 Single Family Residential. Property to the east is in Eastborough and is residential.

The applicant is requesting consideration to vacate a portion of a 16-ft utility easement and a platted 30-ft setback. The applicant proposes to build a detached 30-ft x 32-ft garage with an 8-ft high garage door. The garage will allow easier covered access to the applicant's handicapped equipped vans. The applicant currently has two attached, connected double garages (approximately 40-ft x 24-ft, total size of the two put together) and an attached carport (24.6-ft x 21.1-ft). The applicant proposes using the current access off of Woodlawn that the existing attached, connected double garages are using. The proposed garage will encroach 30-ft into the platted 30-ft wide setback (this encroachment was reduced from 30-ft to 25-ft just prior to the 06-14-01 SD meeting) and take up 32-ft of the southern 37-ft of it. The proposed garage will also encroach 3-ft deep into the 8-ft (1/2 of the 16-ft easement) for 30-ft of its length. There is nothing unusual about the size or configuration of the lot; it is a typical lot for this addition and for this subdivision. The 30-ft street side setback appears to be consistent in this residential area along Woodlawn. There appears to be no other encroachments into this setback along Woodlawn in this area. The front of the house faces Peach Tree St and is oriented so the side yards are the east and west sides, with the south side being the rear yard. The OCI Director regards the front yard as the north side.

VAC2001-00020 was deferred (by mutual agreement between Staff and the applicant) for 2 weeks at the Subdivision Committee's May 31, 2001 meeting. VAC2001-00020 was considered by the Subdivision Committee at its June 14, 2001 meeting. Prior to the June 14 meeting the applicant modified his proposal by moving the garage 5-ft west and attaching it to the primary structure. The encroachment into the 30-ft setback would be 25-ft rather than the original 30-ft. The 3-ft encroachment into the utility easement would remain as in the original proposal. The revised legal description reflects this change and is noted in bold above.

Based upon the information available prior to the public hearing, Staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 17, 2001, which was at least 20 days prior to this public hearing.
 2. That private rights will be injured or endangered by the vacation of the above-described setback and utility easement, and the public will suffer loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be denied.
- B. Therefore, the vacation of the setback and utility easement described in the petition should be denied due to the following reasons.

Staff's recommendation is for denial and proposes that the applicant move the proposed detached garage back out (going west) of the 30-ft street side (Woodlawn) setback and attach it to the existing garages. This would make the proposed garage part of the principle structure and trigger the reduction of the current SF-5 zoning 20-ft rear

yard setback to 5-ft. The applicant's encroachment would then be only the 3-ft encroachment into the utility easement. Public Works recommends reducing the 32-ft length to 30-ft, which would eliminate the encroachment into the utility easement. Making the proposed garage part of the principle structure would restrict its height to 60% of the 35-ft maximum for SF-5 zoning; maximum height allowed would be 21-ft for the garage. These Staff recommendations would preserve the current lack of encroachments along this section of Woodlawn Blvd and into the utility easement.

City Public Works recommends denial of the request to vacate the utility easement, due to the option of relocating the proposed garage in a way that would not encroach on either the easement or the set back. If the applicant is allowed to encroach into the utility easement they require a "Hold Harmless Agreement" and the applicant would be required to move the existing manhole and extend the existing sewer line east into the Woodlawn ROW, to clear the proposed encroachment, at the applicant's expense and according to City Standards.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends denial due to the following reasons:

Staff's recommendation is for denial and proposes that the applicant move the proposed detached garage back out (going west) of the 30-ft street side (Woodlawn) setback and attach it to the existing garages. This would make the proposed garage part of the principle structure and trigger the reduction of the current SF-5 zoning 20-ft rear yard setback to 5-ft. The applicant's encroachment would then be only the 3-ft encroachment into the utility easement. Public Works recommends reducing the 32-ft length to 30-ft, which would eliminate the encroachment into the utility easement. Making the proposed garage part of the principle structure would restrict its height to 60% of the 35-ft maximum for SF-5 zoning; maximum height allowed would be 21-ft for the garage. These Staff recommendations would preserve the current lack of encroachments along this section of Woodlawn Blvd and into the utility easement.

City Public Works recommends denial of the request to vacate the utility easement, due to the option of relocating the proposed garage in a way that would not encroach on either the easement or the set back. If the applicant is allowed to encroach into the utility easement they require a "Hold Harmless Agreement" and the applicant would be required to move the existing manhole and extend the existing sewer line east into the Woodlawn ROW, to clear the proposed encroachment, at the applicant's expense and according to City Standards.

BILL LONGNECKER, Planning staff "The applicant is requesting a 30-day deferral from the MAPC. It may be noted that this case was deferred by mutual agreement between staff and the applicant for two weeks at the Subdivision Committee meeting on May 31, 2001. Two weeks later, at the June 14 Subdivision Committee meeting, this applicant's request for vacation was denied at that time. Mr. Kaplan is here for the applicant to speak to the need for a deferral."

MICHAELIS "Okay, can we hear from the applicant, please.?"

BOB KAPLAN "I am here as a representative of the applicant. I would like to have a 30-day deferral on this case. We did present it—not successfully—to the Subdivision Committee for their recommendation. There are two issues. One is a building setback issue that involves Woodlawn Avenue. The other is an easement encroachment issue on the south.

The easement encroachment issue essentially arose at Subdivision when I had an opportunity to first talk to Rob Younkin. I think that issue can be resolved, and I would like an opportunity to resolve that directly with the Water and Sewer Department.

The setback issue, I want an opportunity to go back to my client and see what kind of revisions that we can maybe make as far as the setback is concerned before we bring that back. It is a situation of a gentleman who is a handicapped gentleman, who drives a van that is an exceeding tall vehicle so that he can accommodate a hydraulic lift and a wheelchair. He purchased a home, believing that he could build an additional garage to accommodate his vans and found out that he was in violation of a setback to be able to site the garage the way he wanted to site it with access from the north and didn't feel he could accommodate a Woodlawn access because of radius in turning movements. It needs to be reworked.

The original deferral came about by agreement between staff and the applicant because we thought we could resolve something between ourselves, subject to planning. That did not come to fruition. So I would like time to take another look at that, have an opportunity to talk to Mr. Younkin about the sewer and the manhole and see if that part of it, at least, can be resolved. There was no opposition then and I am sure there is no opposition now."

MICHAELIS "Is there anyone in the audience wishing to speak on Item 3/1? Okay, I will bring it back to the Commission."

MOTION: That the item be deferred for 30 days.

JOHNSON moved, **HENTZEN** seconded the motion, and it carried unanimously (11-0).

- 3/2. **VAC2001-00023** – Bonanza, Inc requests to vacate a 16-foot utility easement, located northwest of the 21st Street North and west Amidon intersection.

BILL LONGNECKER, Planning staff "The reason for this request is for the redevelopment of the site. This case was considered by the Subdivision Committee at their June 14 meeting, and they recommended for approval with noted conditions. Nothing has changed for this case since that meeting. Are there any questions?"

MICHAELIS "Are there any questions of staff? Thank you. May we hear from the applicant, please?"

KIM EDGINGTON "I am with Austin Miller, representing the applicant. We are in agreement with all of staff's comments. I would be happy to entertain any questions if you might have them."

MICHAELIS "Are there any questions of the applicant? Thank you, Ms. Edgington. Is there anyone in the audience wishing to speak either in favor of or in opposition to this item? If not, I will bring it back to the Commission."

MOTION: That the request be approved.

MCKAY moved, **WARREN** seconded the motion, and it carried unanimously (11-0).

ZONING:

4. **Case No. CON2001-00028** – Bob and Anna Haley (owners); Verizon Wireless LLC (applicant); Communication Equipment Specialists, Inc. c/o Teresa C. Edwards (agent) request a Conditional Use for a wireless communication facility on property described as:

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 25 SOUTH, RANGE 1 EAST, IN SEDGWICK COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE NORTH 01 DEGREES 00'13" WEST ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER A DISTANCE OF 859.96 FEET; THENCE SOUTH 88 DEGREES 59'47" WEST LEAVING SAID EAST LINE A DISTANCE OF 179.99 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND TO BE DESCRIBED; THENCE CONTINUING SOUTH 88 DEGREES 59'47" WEST A DISTANCE OF 75.00 FEET; THENCE NORTH 01 DEGREES 00'13" WEST A DISTANCE OF 75.00 FEET; THENCE NORTH 88 DEGREES 59'47" EAST A DISTANCE OF 75.00 FEET; THENCE SOUTH 01 DEGREES 00'13" EAST A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING. CONTAINS 5,625 SQUARE FEET OR 0.129 ACRES, MORE OR LESS. Generally located north of 101st Street North and west of Broadway.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is seeking a Conditional Use to permit the construction of a 150-foot high monopole tower (see attached elevation rendering) for use by Verizon Wireless LLC. The proposed site is zoned "RR" Rural Residential. Wireless Communication Facilities over 65 feet in height in the "RR" Rural Residential zoning district may be permitted with a Conditional Use.

The proposed tower would be sited on a 5,625 square foot area located north of 101st Street North and west of Broadway. Access to the site is proposed via an existing gravel drive. The applicant's site plan (attached) depicts a 75-foot by 75-foot compound with the tower shown in the center of the compound and the initial ground-level equipment shown in the western portion of the compound. The compound is shown as being enclosed by a six-foot high chain link fence with barbed wire. No landscaping is shown on the site plan.

The applicant indicates (see attached memo) that the proposed wireless communication is needed for Verizon Wireless to provide improved wireless telephone coverage in Valley Center and along I-135. The applicant

indicates they attempted to locate their antennas on a water tower located approximately one mile to the east; however, Rural Water District #2 would not grant permission to locate the antennas on the water tower.

The character of the surrounding area is rural, with most of the property in the vicinity used for agriculture. The owner's house and farm buildings are located to the north on the parent tract of the subject property. With the exception of a mobile home park located approximately 1/3 of a mile to the west that is zoned "GC" General Commercial, all property surrounding the site is zoned "RR" Rural Residential. The nearest residence not owned by the applicant is located approximately 250 feet east of the site across Broadway.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	Farm-related residence
SOUTH:	"RR"	Agriculture
EAST:	"RR"	Single-family residence
WEST:	"RR"	Agriculture

PUBLIC SERVICES: No municipally supplied public services are required. The site has access to Broadway, a four-lane County arterial street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. A landscape plan shall be submitted for approval by the Planning Director that provides 4 inch caliper shade trees to be planted and maintained every 40 feet along the eastern boundary of the parent tract as near as possible to Broadway from the southern edge of the access drive to the southern edge of the lease area.
- G. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- H. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- I. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- J. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- K. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.

L. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural, with most of the property in the vicinity used for agriculture. The owner's house and farm buildings are located to the north on the parent tract of the subject property. With the exception of a mobile home park located approximately 1/3 of a mile to the west that is zoned "GC" General Commercial, all property surrounding the site is zoned "RR" Rural Residential. The nearest residence not owned by the applicant is located approximately 250 feet east of the site across Broadway.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently undeveloped. Wireless communication facilities in excess of 65 feet in height in the "RR" Rural Residential zoning district may be permitted as a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed property not owned by the applicant is a single-family residence located approximately 250 feet to the east across Broadway. The only impact to be noted at the time this report was prepared is the visual impact of a tower, and the visual impact should be reduced by the landscaping required by the conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which are available to accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility.
5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.

PLATT "As part-owner of and President of the Board Of Directors of a building actively engaged in the leasing of antenna space, I will step down from this item."

MICHAELIS "Thank you, Mr. Platt."

KNEBEL "This is a request for a Conditional Use to permit the construction of a wireless communication facility. The site is zoned Rural Residential, and the applicant is requesting the Conditional Use for 75 foot x 75 foot area, located on a larger 136 acre tract that is north of 101st North and west of Broadway.

The applicant indicates that the request is to build a monopole tower that would accommodate four carriers. (Indicating) This slide shows the compound and how it would be accessed from an existing access drive, which has access to Broadway. The area in which the tower is requested is in this area here (indicating), and this slide shows the level of service with the lighter color being poor or no service and then by adding the tower, you can see that it expands their level of service up along Interstate 135, and also in the City of Valley Center.

The applicant did submit a letter with their application that indicated that they had attempted to locate these antennas on a Rural Water District tower which is located approximately one mile to the east, along the Interstate and that that Rural Water District would not grant permission to place those antennas on their tower. I have contacted the Rural Water District and confirmed that that is the case that that Rural Water District is not interested in locating antennas on their water tower. The surrounding area is primarily rural. There are mobile homes on some property that is zoned General Commercial, approximately a quarter of a mile to the west of the site, and a residence on property across Broadway from the site that is the most impacted by the proposed tower, and another house located further to the north along Broadway.

Barfield arrived at the meeting at 1:45 p.m.

When this first came to you, the Planning staff had recommended this request for approval, subject to a number of standard conditions that we have developed over the last year or so in consideration of the many tower cases that we have had. At your last meeting on May 24, you deferred this item at the recommendation of the Valley Center

Planning Commission, whose area of influence this tower is located within. They recommended that deferral based on the visual impact on the property owner to the east and asked that the applicant look at other alternatives for relocating this tower instead of in this particular location—relocating it somewhere else on the owner's property. They considered a site up to the north as an option.

They have submitted a letter that details the reasons why the applicant is not willing to relocate this tower. They have environmental concerns and concerns about the location of pipeline easements across the property. They are concerned about the fact that they are not licensed to provide wireless phone service in Harvey County, and if they moved the tower further to the north, it would infringe upon that license agreement with another company and probably would not be able to do that. They are concerned about the cost of finding another site and then also the landowner has some concerns about locating the tower further to the south due to the fact that it would create an access road across the field and make it less usable for his purposes.

Basically, from the Valley Center Planning Commission's standpoint, after the two hearings that we have had quite lengthy discussions on this item before them, the one item that keeps coming to the forefront is the visual impact on the property to the east. Really, I think as far as the Planning staff and the applicant is concerned, that is really the only issue where we have any real difference. I have listed on the first page of the blue memo one of the design guidelines in the Wireless Communication Master Plan, which indicates that the facility should be located where trees or buildings obscure some or all of the facility from view, and alternatively installing new plantings or screenings around a site where it is visible from residential areas.

From purely a design standpoint and considering no other factors, the Planning staff thinks that there are better sites on this property that would provide screening from this residence, through existing buildings and trees, which are located here (indicating), and they could place a tower in some location here (indicating) and agree that there are some other issues of concern other than design. The other alternative, which is what I think the Valley Center Planning Commission finally adopted would be to relocate the tower within the 75 foot x 75 foot compound, moving it approximately 25 or 30 feet further south to perhaps move it out of the line of view from the property to the east.

The only other alternative, since the case was advertised for this particular 75 foot x 75 foot tract is if this Commission does want to have this tower moved to another location on this property, basically the only options would be to have the applicant agree to withdraw the request and re-file for another location. Absent that, if sufficient findings can be made, the request can be denied based on the visual impact and other factors.

As I mentioned previously, the Valley Center Planning Commission did hear this and recommended approval. They had three in favor and one who voted against it and one who abstained. They agreed with the recommended conditions of approval that were recommended by staff, and in addition they added three conditions: moving the tower a minimum of 25 feet within the compound; placing a non-strobe red warning light on the top of the tower, and then requiring a surety bond for the dismantling of the tower if it is unused for one year. With that, I will close my comments and take any questions you might have."

MICHAELIS "Are there any questions of staff?"

BARFIELD "It appears to me that the recommendation from the Valley Center Planning Commission contradicts what you have here. They are recommending moving it to the south and you are suggesting moving it to the northwest."

KNEBEL "Well, as far as that one particular design guideline in the Wireless Communication Master Plan, a location further to the north and west back behind the buildings and the trees that currently exist on this portion of the property would most comply with that design criteria that says that you should screen the tower at least partially from view with existing buildings and trees. Initially, our recommendation, because typically we don't consider taking a request that is for this property and saying that they need to withdraw their request and re-file, initially our recommendation is to plant trees. That is what the Valley Center Planning Commission ended up adopting, a plan that required trees to be planted along the street row to eventually provide that screening.

I would agree that there is a difference between the two, but in order to move the tower up here (indicating), you would either have to have the applicant withdraw the request or deny this request, which would force them, if they chose, to submit a new request."

MCKAY "Scott, the way this is presently designed, how far is that from the corner of Broadway and 101st?"

KNEBEL "I think this (indicating) is the quarter mile line, so it is about 1,000 feet or so."

MCKAY "The reason I am saying that is that if you look across Broadway, that is a terribly blind corner coming from the east. I wouldn't want to do anything to create that coming from the west. There are trees on both sides

and it is a blind corner coming from the east. So if they are requesting moving it further south and trees screening it and stuff—that really is a bad corner.”

KNEBEL “It is just within the compound there is where they are recommending to move it south, but the distance between (indicating) here and here, is about 1,000 feet.”

GAROFALO “Have you had any contact with the applicant since the Valley Center meeting?”

KNEBEL “Yes. We met before this meeting and they are agreeable to the recommendation of the Valley Center Planning Commission. I will let them speak to that.”

MICHAELIS “Are there any further questions of staff? Thank you, Mr. Knebel. Is the applicant here?”

DAVID BENGSTON “I am appearing on behalf of the applicant, Verizon Wireless. Mr. Knebel did a good job of summarizing the history of this application. What I would like to address for you today is the actions that Verizon has taken since this was last deferred, with the agreement and our marching orders to go out and consider alternative locations for the tower on this property. What I would like to do is run through what Verizon has looked at and considered and tell you why, in the opinion of Verizon and the landowner, the alternative locations are not acceptable.

In your packets, there is an 8-1/2 x 11 map that you can look at. It is not to scale, but it can give you some reference. The first issue on the location of this tower is moving the tower anywhere to the north of its current location. That is not acceptable to Verizon. Verizon is not licensed to provide wireless services in Harvey County. We have negotiated an agreement with Western Wireless, who is the licensed provider in Harvey County, Kansas. The agreement that we currently have provides for the tower to be located as requested, and any move of that tower to the north would not be in accordance with the terms of the agreement they have reached with Western Wireless. Also, in the northern half of this property—in the northeast corner, there are existing pipeline easements. There are two pipelines running through that corner. There are also concerns with contamination at that site. Tests revealed some problems with possible contamination.

In the northwest corner of the property, there is an abandoned oil well that has not been plugged. There is also a large pond at that location, and of course you would be required to take much more of the landowner’s property to get access to the tower and to run Telco and power to the tower. Down in the southern half of the property—we looked at that also. You go to the southwest corner and at the site there is a large slough or waterway that runs approximately from the center of the property down to the southwest corner. That makes locating a tower at that location not desirable. Also, there is a problem with getting a curb cut and access off of 101st Street to the southwest corner. We have been told that that is likely not possible.

So what we have come up with is that the location that we have requested the Conditional Use permit on is the best location for the landowner and for Verizon and have decided to proceed with the request to leave it at that location.

If the tower were moved to the south toward the intersection of 101st Street and Broadway, moving it any further south is going to cause the landowner to lose a large strip of land and make it unusable because of the required setbacks for any buildings from this tower. Also, commercial development is moving towards this property. There is already some commercial development to the west on 101st Street. The closer you get to the corner, which is the prime area of location for commercial development of this property, you are going to take away a large chunk of that landowner’s property and it will become unusable for those purposes.

Staff’s initial report in this case stated that the Conditional Use permit application at the proposed location complied with both the design and location requirements of the Communications Master Plan. We have looked at alternative locations. In their most recent memo, staff did recommend that we look at a location to the north and to the west of the current location, which would put it behind what they said was existing trees or screening primarily caused by the house of the landowner.

If you go to the property and look at that location, what the landowner has is cattle pens located there. If we were to move the tower to the north and to the west, you would be right in the middle of those cattle pens. They would have to be relocated by the landowner. We would also run into the issue of the agreement with Western Wireless about not moving that tower any further to the north. Verizon feels that if you balance all of the factors—Verizon’s interests; the landowner’s interests—that the tower is located at the best available location on that property. It is going to provide significant benefit to the community of Valley Center. Currently there is no service in the northern half of that community from Verizon. It is going to provide wireless service in that area and will also increase the availability of the wireless service on I-135.

We went through the Valley Center Planning Commission meeting Monday night and have heard all of the conditions that they recommended be placed on the application for their approval. We are in agreement with all of those recommendations. We are willing to comply with them and we request that you likewise approve the application today with those conditions. If anyone has any questions, I will be happy to try and answer them."

KROUT "First, on the location to the north and west, let's assume that the tower was just a little bit west of the cattle pens instead of in the cattle pens. Do you think that Western Wireless would have a real problem with moving the tower about 800 feet to the north of where your current agreement says it is okay?"

BENGSTON "I can't speak to what Western Wireless would say about that. I have not been involved in the negotiations with Western Wireless, so I can't give you even my best guess as to what they would say. What I am told is that the current agreement that they are discussing with Western Wireless does not allow for the tower to move any further to the north because it infringes that much more on their service territory."

KROUT "Second, the reason for the red light from the Valley Center Commission, is that because they have light airplanes in the vicinity?"

BENGSTON "My understanding is that their concern was that several landowners' in this area might have private air strips—grass strips that aren't licensed by the FAA, and so the FAA approval that we obtained may not cover that situation, so we have agreed to put the red light on top of the tower."

KROUT "And third, the bond requirement, which I guess you also agreed to, is not something that is in the City/County Code. Is that something that you are used to doing in other communities and you are prepared to do?"

BENGSTON "Verizon has done that in other communities, and if that is the condition they want, we are comfortable providing that bond."

MICHAELIS "Are there any other questions of the applicant?"

GAROFALO "Sir, have you talked to the neighbor who is concerned about this?"

BENGSTON "He was at the Valley Center Planning Commission on Monday evening. We have heard the concerns that he has expressed. Staff expressed those concerns in their initial report and recommended that landscaping be installed at this site, and we have agreed to that condition. There will be landscaping. There is a Landscape Plan that we have agreed to and we will plant trees in the spring."

GAROFALO "I guess I have a little bit of a problem with this other wireless company in Harvey County. I have a problem understanding why 800 feet would make that big of a difference in a wireless communication setup. If there was going to be interference or something—or whatever they are concerned about—wouldn't you get it from where you want to put it now?"

BENGSTON "Frankly, I am not a RF Engineer and I can't answer any technical questions with respect to the impact or the infringement on Western Wireless' exclusive territory. But it is my understanding that it is their desire that we can't move that any further north."

BARFIELD "I just want to be sure that I understand you correctly. Earlier in your statement, I thought I heard you say that you were opposed to moving it to the south because it would damage the owner's property. Then later, you said you would be in favor of that."

BENGSTON "We were in favor of moving the tower south in accordance with the Valley Center Planning Commission's recommendation, which was that we retain the existing 75 x 75 foot square compound and move the tower as far as possible south within that 75 x 75 foot containment area. So, in essence, we would be moving it approximately 30 feet to the south. The move that we are opposed to further south would be moving that whole 75 x 75 foot block down to the south."

MICHAELIS "Are there any further questions of the applicant? Thank you, Mr. Bengston. Is there anyone else in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to?"

JEFF BERRY "I live at 10136 North Broadway, directly across from this. I have been before most of you people here before. There have been some real interesting things that have come up that Verizon and I will be discussing in the future at this point. I have had a flood of phone calls, actually, from people all around—not just around our area, but from all over town. It really shocked me. They had gotten my name and number out of the paper and wanted to say thank you. One as recent as this morning."

There are numerous things that I don't understand. If Bob wants this on his property, I think it is fantastic. He wants the revenue—he has expressed that to me. If somebody is going to get it, it might as well be him. That's fantastic. I don't have a problem with that. Bob is a great guy.

You see where my house sets from there. Verizon never once came out, when they were doing this core sample and said 'Wow, there is a house there! Maybe we ought to talk to this guy'. Obviously, they didn't have to. From here on in, I will fight against this, not just this tower, but Verizon will hear from me again. I will take it to legislature, I will take it so that when they do something like this and there is a house sitting directly in line, they need to stop and say 'Hey, how are you? Do you have a problem with this?'

It was brought up in the Valley Center Planning Commission meeting that they did a core sample. A young lady that sat on there was asked how much that basically cost. She responded that it was somewhere around \$5,000. Maybe a little excess. It should be in the Valley Center Planning Commission minutes. That is the minimum of all of the experts that I have talked to, placing this tower where it is proposed—that is the minimum that it is going to hurt my property value because of where my house sits, how it sits. I didn't build the house, I just bought it.

Again, like I told the Valley Center Planning Commission, we have a multi-million dollar company here and they are all concerned about this money. Well, I am concerned about my money. My wife and I and my family didn't buy the place to throw money away. I need a new driveway, and I was getting ready to put it in. It will be \$8,000 to \$10,000. I am not going to do it right now. Why should I stick more money into this house that is already going to get damaged? They can plant all of the trees and shrubs they want around it—what the pictures fail to show is, and like I have said before—head down Broadway some time. When you get to that intersection, you will see that this side—being the east side—sits 5 to 6 feet lower. That is another reason I need a new driveway; I have to put drainage in. It is sitting up against my house. It sits lower than what that side of the road does. You have a constant up look. We're okay with that, but not with something sitting out there in the middle that we are going to stare at all of the time.

They propose they want to move it 15 to 30 feet to the south. Wonderful. What is 25 to 30 feet going to do on a 150-foot tower? Are they going to be able to bring in 150-foot trees? I don't think so. That would block the view anyway. I know from the homework I have been doing recently that there was a gentleman not long ago that had a bunch of old vehicles sitting out behind a barn. He was told to move them because it was unsightly for the neighbors. The neighbors didn't have to look at them. I know this isn't a bunch of old vehicles, but it is still the same thing, if you think about it. It is something that we have to stare at every day and we didn't move out there to stare at that.

Monday night, the Valley Center Planning Commission was asked how many core samples did you do? They said one. They said 'did you go anywhere else and do any core samples'? Well, no. I don't want to see this moved off of Bob's property. If he wants it, I want him to have the revenue and I have told him that, one on one."

MICHAELIS "Mr. Berry, your time is up. Do you have anything relevant to add?"

BERRY "No."

MICHAELIS "Okay, are there any questions for Mr. Berry? Thank you, sir. Is there anyone else to speak in opposition to this item? Does the applicant wish to rebut?"

BENGSTON "Nothing further."

MICHAELIS "Okay. Thank you."

GAROFALO "I have a question for the applicant. It appears from what you said earlier that the biggest stumbling block for moving this to the north is your agreement with the other company?"

BENGSTON "That is one of the biggest, yes."

GAROFALO "Would it be impossible for your company to get back with them to renegotiate some sort of an agreement on moving that away from this guy's window?"

BENGSTON "I am not a participant in the negotiations, so this is not official information, but to the best of my information, Western Wireless is not willing to allow any location further north. These negotiations were conducted over some period of time before they selected the location they have."

MCKAY "You mentioned that you weren't an engineer, and I understand that. How far of a diameter from the center of this does it go north?"

BENGSTON "There are some maps....this is Teresa Edwards, she can answer that."

TERESA EDWARDS "I am here in behalf of the applicant. Is your question regarding the RF coverage?"

MCKAY "Yes. How far it reaches north, east, south and west. What is the total diameter it reaches?"

EDWARDS "Scott had shown earlier what they call a propagation study, which had different colors on it. The various center radius of that is going to be about a one-mile radius, which is what they call in-building penetration, which is going to be your greatest area of coverage. So the bluish right at the center of the tower would be the most penetrate able area of coverage."

MCKAY "So the outmost would be how far?"

EDWARDS "About three miles. I might be able to address the other gentleman's concern, a little bit about the extension agreement with Western Wireless—KS RSA 14. With extension agreements, given that they are licensed by the government and each wireless carrier is given County jurisdiction, such that Verizon Wireless has the ability to provide coverage in Sedgwick County. When you abut right next to a neighboring county in which you are not licensed to provide coverage, there is what they call a fringe area that is in between those two counties.

It is the responsibility of the wireless carrier that intends to encroach upon that neighboring county in which they are not licensed to exercise the negotiations and ask this other carrier if they will allow them to overlap into their coverage so that the end user has a seamless call. But that is completely up to their discretion as to whether they will allow that. If Verizon, depending on how high they turn their power up on their site, or how high they need to turn it in order to provide the coverage that they have to provide, they can only control that so much. Their output power is what controls the spread over into that neighboring county. If Western Wireless says 'you can only go this far', and Verizon can't control the power or back it off enough to allow that to happen, then the negotiations stops because Western has already said that they could not infringe beyond that point.

That is really the bottom line regarding the existing agreement. They have already said 'if you change locations, we will null and void this agreement'. That is Verizon's position, feeling that they had no more negotiation power."

KROUT "My question is for you. My recollection is that there is a tower a block north of the Sedgwick/Harvey County line on Broadway just north of 125th Street. Did they have to negotiate with Verizon or any other providers in Sedgwick County, and how would it be possible that they could locate a block north of the county line, but you may have difficulty locating a mile and a half away?"

EDWARDS "Because they were there first. That would be my first answer. Verizon is the second one to come to the playing field, and they didn't have any coverage that provided in the north half of Valley Center. Wherever their existing structure is that provides coverage in the south must not spread far enough to where there is an overlap issue, whereas this tower will and those other wireless carriers may have had extension agreements with that carrier. Verizon probably does not."

MARNELL "I have a question for Scott. Do we usually put restrictions in here on strobe lights?"

KNEBEL "Yes. The strobe lights would only be able to be permitted with a variance granted by the Board of Zoning Appeals."

MARNELL "Okay. I thought we usually had those included in our recommendations."

KNEBEL "No. It is usually not specifically listed, it is included in the section of the Code that is referenced in the first recommended condition of approval that is Section III.D.6.g, and the prohibition of strobe lights is one of those items in that section of the Unified Zoning Code."

MARNELL "I am ready to make a motion."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is rural, with most of the property in the vicinity used for agriculture. The owner's house and farm buildings are located to the north on the parent tract of the subject property. With the exception of a mobile home park located approximately 1/3 of a mile to the west that is zoned "GC" General Commercial, all property surrounding the site is zoned "RR" Rural

Residential. The nearest residence not owned by the applicant is located approximately 250 feet east of the site across Broadway. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently undeveloped. Wireless communication facilities in excess of 65 feet in height in the "RR" Rural Residential zoning district may be permitted as a Conditional Use. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed property not owned by the applicant is a single-family residence located approximately 250 feet to the east across Broadway. The only impact to be noted at the time this report was prepared is the visual impact of a tower, and the visual impact should be reduced by the landscaping required by the conditions of approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which are available to accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. A landscape plan shall be submitted for approval by the Planning Director that provides 4 inch caliper shade trees to be planted and maintained every 40 feet along the eastern boundary of the parent tract as near as possible to Broadway from the southern edge of the access drive to the southern edge of the lease area.
- G. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- H. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- I. The monopole shall be located a minimum of 25 feet south of the center of the 75-foot by 75-foot lease area.
- J. A non-strobe, red aircraft warning light shall be placed on top of the monopole.
- K. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- L. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- M. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- N. Any violation of the conditions of approval shall render the Conditional Use null and void.

MARNELL moved, **WARREN** seconded the motion.

BISHOP "I am not going to be able to support the motion. I just wanted to explain that I think this has too great of an impact on that area. I feel like there are alternatives that could be explored. I am concerned that while the overall guidelines that were worked on for a number of months, it appears to be very, very difficult to achieve co-location with these. I asked Scott to check on the Rural Water District and why it was not possible to locate on the tower. That was confirmed that they would not allow it. When there are possibilities in the community, it seems that there is a lack of cooperation to achieve a sufficient amount of co-location, which would save, for instance, this homeowner a great deal of grief. I would like an explanation from the Rural Water District as to why that is not possible. There may be some good technical reasons, but they haven't been provided so far."

BARFIELD "My question is for staff, and probably Marvin can answer this...are you supportive of this with a move 25 foot to the south?"

KROUT "No. We would like to see the applicant at least attempt to negotiate with Western Wireless to move it 800 feet to the north and west."

MICHAELIS "I guess I am confused. It says here that you recommend approval."

KROUT "Right. But in the memo that Scott sent to you, the updated cover memo that updates the information, we say that in looking at this more closely, we do feel that there is an impact that can be mitigated by a small movement. We don't think that 25 feet is enough."

HENTZEN "I had the same question. I reviewed the recommendation for approval and thought it would be what we were considering. Now, from what Marvin just said, that they have changed their mind."

KROUT "We always say with our recommendations 'based on the information we have at the time of the hearing'.
"

HENTZEN "Okay. Well, I am going to vote for the motion on the floor."

GAROFALO "I will not support the motion. I feel that there could be another location that they could find. I cannot, in good conscience, agree to put a tower within that distance of somebody's house where they have to look out and look at this tower. It is just unconscionable that they cannot somehow negotiate to move that thing or find a totally new location in order to put their tower up. I just cannot, with any good conscience, vote for approving that site."

MCKAY "Well, I am not going to say to vote one way or the other. I am just saying that if you move this 800 some odd feet to the north and to the west, there is a private airstrip that runs between 85th and 93rd Streets, which would be within probably a mile or less and this would be almost directly in line with that landing strip, whether they have a light on it or not."

WARREN "In answer to Commissioner Garofalo's concern, I think every tower that we have approved probably has been within the vision of some home. I don't think this is unique. I think every tower has been, and we have had several that have been, in the vision of several homes. But I look at this and compare it with a KG&E transmission line—which they put up all of the time and we don't even have anything to say about it—and I think with the proper screening on this, it won't be as offensive as a KG&E transmission line. That is why I am supporting the motion."

BARFIELD "I would just like to ask, for the record, what is the distance between this tower and the residence?"

KNEBEL "It is approximately 250 feet. I didn't measure it off exactly."

MICHAELIS "Okay. Is there any further discussion?"

VOTE ON THE MOTION: The motion carried with 6 votes in favor
(Warren, Johnson, Warner, McKay, Marnell and Hentzen) and 5 in opposition
(Michaelis, Garofalo, Coulter, Bishop, Barfield). Platt abstained.

KROUT "The action of the Planning Commission is final unless a written protest is filed within 14 days. If that is the case, it goes to the County Commission for the final decision. The applicant and the protestor will be notified."

5a. **Case CUP2001-00020 (DP-73 Amendment #7)** – Robert J. Sudbury (Owner/Applicant); Nelson & Gunderson Attorneys at Law c/o Clark "C.R." Nelson (Agent) request an amendment to Parcel 3 to permit office use of one lot; and

- 5b. **Case ZON2001-00033** — Robert J. Sudbury (Owner/Applicant); Nelson & Gunderson Attorneys at Law c/o Clark "C.R." Nelson (Agent) request a zone change from "SF-5" Single-Family Residential to "NO" Neighborhood Office, on property described as:

Lot 4, Block 1, The Village at Waterford Addition, Wichita, Sedgwick County, Kansas. Generally located on the northeast corner of 25th Street North and Mainsgate.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

The applicant operates an office for a service-type business of brokering, dispatching, and accounting for trucking services from his single-family residence located at the northeast corner of 25th Street North and Mainsgate (7003 E. Mainsgate). The subject property is zoned "SF-5" Single-Family Residential, and is illustrated on an attached site plan. The applicant indicates that he operated the home-based business from his prior residence at 6810 E. Mainsgate for 14 years, and then three years ago, designed and constructed his current residence specifically for the purpose of residing on the ground floor and operating the home-based business in the basement.

An office is a permitted home occupation on property, such as the subject property, in the "SF-5" Single-Family Residential zoning district; however, the Unified Zoning Code does not permit non-resident employees for home occupations in the "SF-5" district. The applicant currently employs five non-resident employees, who park in a paved parking area owned by the homeowner's association located across 25th Street North to the south in an open space reserve.

Originally, the applicant applied for a Variance to permit non-resident employees for a home occupation business. However, after consulting with planning staff regarding the strict criteria for granting a Variance and the court's requirement to exhaust administrative remedies such as zoning should the Variance be denied and appealed to District Court, the applicant chose instead to apply for a zone change to "NO" Neighborhood Office, which is the first zoning district that permits the applicant's current use of the subject property. Additionally, the subject property is located within the Comotara Residential CUP (DP-73), so an amendment to permit an office use on a portion of Parcel 3 (that is restricted to single-family and zero lot line residences) also is required.

The subject property is located within an entirely single-family residential neighborhood. All property surrounding the site is zoned "SF-5" Single-Family Residential and is developed with single-family residences or is open space. The nearest properties zoned for office uses are located approximately 1/3 of a mile to west and have frontage to Woodlawn, a four-lane arterial street.

If "NO" Neighborhood Office zoning is granted, the use of the subject property for an office would be subject to regulations pertaining to non-residential uses in the Unified Zoning Code, the Landscape Ordinance, and the Uniform Building Code. Off-street parking on the subject property at rate of one space per 250 square feet designated for office use plus four spaces for the residence (due to a restrictive covenant pertaining to narrow street width) would be required unless an off-site parking agreement with the homeowner's association can be reached. If off-site parking is to be used, an additional amendment to the CUP would be required to permit the ancillary parking area in a residential zoning district. The parking area also would need to be screened per the requirements of the Landscape Ordinance whether it was located on-site or off-site. A screening fence and buffer landscaping would be required along the side and rear property lines of the subject property. A landscaped street yard also would be required on the subject property. A Compatibility Setback of approximately 22 feet would be required from side and rear property lines. Since the existing structure is located closer than 22 feet from the side property line, an administrative adjustment would be required to reduce the side-yard Compatibility Setback.

CASE HISTORY: The subject property is platted as Lot 4, Block 1, The Village at Waterford Addition, which was recorded August 13, 1993. The subject property is within the Comotara Residential CUP (DP-73), which was approved July 1, 1975 and since has been amended a half-dozen times.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family residences
SOUTH: "SF-5" Open space
EAST: "SF-5" Single-family residences
WEST: "SF-5" Single-family residences

PUBLIC SERVICES: The site has access to both 25th Street North and Mainsgate. Mainsgate is a residential collector street, and 25th Street North in this location is a 32 foot wide private street maintained by the homeowner's association. The site is served by municipal water and sewer service.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan indicates that the area is appropriate for "Low Density Residential" development. The Office Locational Guidelines of the 1999 Update to the Comprehensive Plan state that office uses should generally be located adjacent to arterial streets and should be incorporated within or adjacent to neighborhood and community scale, commercial development. The Office Locational Guidelines also state that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The subject property is located within an entirely single-family residential neighborhood. All property surrounding the site is zoned "SF-5" Single-Family Residential and is developed with single-family residences or is open space. Therefore, office use of the subject property is inconsistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The subject property is developed with a viable, occupied single-family residential structure and, thus, is suitably restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The introduction of office uses into an entirely single-family residential neighborhood will have detrimental affects on nearby properties. The site is too small to accommodate office uses, as indicated by the current employee parking area located off-site in a reserve area maintained by the homeowner's association. Office uses also generate traffic, noise, trash and other nuisances that are detrimental to nearby residential uses. Permitting home-based office uses involving non-resident employees could establish a precedent that, if continued, could lead to a decline of the residential viability of nearby properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan indicates that the area is appropriate for "Low Density Residential" development. The proposed office use does not conform to the Land Use Guide. The Office Locational Guidelines of the 1999 Update to the Comprehensive Plan state that office uses should generally be located adjacent to arterial streets and should be incorporated within or adjacent to neighborhood and community scale, commercial development. The Office Locational Guidelines also state that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The proposed office use does not conform to the Official Locational Guidelines, as it is located in the heart of a residential neighborhood distant from arterial streets and commercial development and does not serve a transitional function between lower and higher intensity uses.
5. Opposition or support of neighborhood residents: At the time this report was prepared, planning staff had received seven written statements (attached) from neighborhood residents indicating their opposition to the request.

KNEBEL "This is a requested rezoning and an amendment to a Community Unit Plan. This particular property is currently zoned 'SF-5' Single-family residential and is developed with a single-family residence. The owner of the property operates a service-type business that provides brokering, dispatching and accounting for trucking services, which is an office-based business in that single-family residence. He has operated this home-based business in this location for the past three years, and prior to that for 14 years in another location just down the street.

The home occupation requirements of the Unified Zoning Code do not permit non-resident employees to be employed at a home occupation office. In this particular case, the applicant employs five non-resident employees, I think, perhaps four. I think I have heard both statements, but in either case, there are non-resident employees that work at this business, so it is not a permitted home occupation. The Neighborhood Office which is the zoning district that the applicant has requested is the first zoning district in the hierarchy of districts that would permit an office use like what is being conducted in the home today.

The aerial shows that this is a rather new development. The home has been there for three years, the aerial is four years old, and so it is not on there. The first floor of the home is used as a residence; the basement is used as an office. The streets are narrow streets for a patio home-style development. There are parking areas along the narrow streets and the non-resident employees park in this parking area over here that is within the reserve that the homeowners' association maintains that is located south of the subject property. There is neighboring property to the east and the reserve area is to the south. There are houses further to the south along Mainsgate.

Staff is recommending that this request be denied. We are basing this recommendation on a number of factors, the first of which is that the character, uses and the zoning of the entire neighborhood is Single-Family. The property is zoned for Single-Family, and office uses are not consistent with the zoning, uses or character of the neighborhood. The subject property, as I mentioned, is zoned for Single-Family uses and is developed with a viable and occupied single-family structure, and therefore, we believe that the site is suitably restricted as far as the zoning is concerned.

As far as the impact on nearby properties, the Planning staff finds that the introduction of office uses into an entirely single-family residential neighborhood would have detrimental impacts on these properties—this particular site in particular is too small to accommodate both the single-family residence and the current and proposed future office use. This is indicated by the fact that the non-resident employees are required to park off-site. In addition to that, office uses, as can be documented historically, generate more traffic than residential uses, due to the fact that you have employees coming to and from the site every day. More noise and trash, etc., than residential uses generate.

Also, as far as the precedent setting is concerned, permitting a home-based office through the changing of zoning in this particular instance could lead to a precedent if it is continued whereby you would make it difficult for people to determine whether or not it would be acceptable for their neighbor to say that they want to begin operating an office out of their house. For example, this particular gentleman has a limited number of employees; however, if the zoning is changed, any type of office business, regardless of the number of employees could be operated in that property.

The Comprehensive Plan provides guidance as it does with all cases. The Land Use Guide indicates that this property is appropriate for low-density residential, so the office use does not conform with the Land Use Guide. The locational guidelines for office uses indicate that they should be adjacent to arterial streets and should be incorporated within or adjacent to commercial areas. This property is neither along an arterial street nor adjacent to or within a commercial area.

Then finally, the Golden Rules indicate that one of the factors to be considered is the amount and nature of neighboring property owners and their indication regarding opposition or favor of this request, we received, and have included with your back-up materials, numerous letters of opposition from neighboring property owners to this request. I do want to mention that on June 4, the District Advisory Board heard this request. You should have a summary sheet of the hearing that they had at that time at which they voted 7-2 to deny the request. With that, I will close my remarks and take questions."

MCKAY "Scott, how long did you say that they had been operating their present business there?"

KNEBEL "At the current location, three years. It was 14 years, I think he said, just down the street in one of those houses."

MCKAY "Okay. The second thing, what brought this to the attention, was it a complaint?"

KNEBEL "It was a neighborhood complaint to Central Inspection."

MICHAELIS "Are there any further questions of staff? Thank you, Scott. Is the applicant here, please?"

CLARK NELSON "I represent the applicant, Mr. Bob Sudbury, who is also here today. After listening to the excellent report by staff, if I were sitting in your place, the first question I would ask is what in the world are we doing here? Let me try to explain how we got here today.

First of all, we are asking for justice—and we are asking for a little mercy here. I submit to you that this is the one out of 100 exceptions to the rules that we would like to get adopted here today. We are here because Mr. Sudbury has operated what he thought was legally and proper, for 20 years in this neighborhood, a business in the basement of his home.

Again, what he does is by telephone and by computer, he brokers trucking services to essentially the Continental United States. What you need to understand is that normally there are no trucks that are using the streets, there are no customers or clients that come to the home, it is simply Mr. Sudbury and four or five individuals to run the business in the basement of his home. It is very innocent. He thought he was doing the right thing and it will be very devastating to him if we cannot get approval.

How did this come about? We explained to you that he lived in another location right down the street and did this very thing for 14 to 15 years. He came upon this particular tract of ground and noticed that frankly, it fit his purpose exactly. It provides for off-street parking; he has a basement entrance; he has everything in compliance, at least he thought so; and no customers, no trucks come on-site. I might state to you that the truck you see in

this slide that is parking on the street is not one of Mr. Sudbury's. I have a suspicion that that might be the photographer.

Be that as it may, what precipitated this was after three years—there is a green section there, then a neighbor. There was a trucker that happened to get lost in wherever he was going, and the only address he had, unfortunately, was the address of Mr. Sudbury's home. He parked his truck there to find out what was going on. That is the first and only time in how many years that this has ever happened. Unfortunately, it did happen. We feel that we have made peace with that neighbor, but I can understand the opposition that we have. They must say something. But that is how we got to this situation. Does the grandfather clause apply? Does some kind of adverse possession rule apply because we have been doing it for so many years? By golly, it ought to, but I am not sure that it does. Upon my meetings with Mr. Miller, who is a great fellow, he suggested that this is the way we need to go. Therefore, that is why we are here. I didn't realize that we were going to get a negative recommendation, but be that as it may, that is why we are here today.

When we get into the Golden Rules and all of the rules that result there from, I want you to know that the reason that this zone change request is here is that on the home occupation ordinance of the City of Wichita, there are 10 criteria that you must meet. Amazingly, we meet 9 out of those 10 criteria. If we met the 10th one, we wouldn't have to be here today. You wouldn't have to make a ruling and we wouldn't need your approval.

I want to kind of read through, just very briefly, what those other nine items are. No alteration of the exterior; no more than 50% can be used for the business; no extra noise, vibration, electrical interference, smoke or odors; no outside storage; no more than one commercial vehicle; no inventory; all within the dwelling unit and no signs. You know what? We meet every single one of those. The reason we are here is that the other rule is that if you are going to work there, you also have to live there. Now, I suppose we could dig out some area and make those employees live in the basement, but I don't think anybody really wants us to have to do something like that. I don't even know if it is possible. But that is the one rule that we cannot meet. The reason that it is four or five employees, we have a couple on the telephones; a couple on the computer; and one doing the accounting. One of them used to be Mr. Sudbury's wife, but due to her illness, she can no longer work in the business. One of them was his granddaughter—sometimes she lives there, sometimes she doesn't. So, we kind of have a family business here, but we do have some other outside employees. That is the only reason we are here today.

Now, please stay with me here with regard to the appearance of this home you saw in the photographs. It is a beautiful home, it is extremely well maintained, and it is very quiet. Everybody goes inside and the employees park over there where there is room for three or four cars, and they simply walk over there into the basement. Then one or two can park in his driveway. There is plenty of parking for off-street purposes. Now, they are going to tell you that we have to go to some other body here, that is if we get approval here. We must then go back and get an off-street parking privilege, and all of that sort of thing, which we think is manageable.

But today, simply, are we allowed to continue in a quiet fashion, that which we have been doing for a number of years. In the Golden Rules, what are the uses and the character of the neighborhood? We are not changing that a bit. Until this one complaint, everything was fine. No devaluations, no traffic, and no noise—everything was fine. The suitability—the same thing. The detrimental impact of the neighborhood, truly there is none. The neighbors will contest that it will bring truck traffic and noise, etc., but I submit to you that that is not the case here. This is the exception to the rule that I was telling you about. The trucks aren't supposed to be there. I am sorry we had one in umpteen years that caused this today. Everything happens in the basement here, there is no noise, no signs, and no customers. It is not what you would normally think.

With respect to the opposition, I appreciate the gentleman from the homeowners' association, he is a fine fellow. He has to do what he is doing here today. He will talk about certain things and maybe we can rebut at the proper time. I plead with you to see that justice is done here today. That a little bit of mercy might come into play every once in a while with this body. I would appreciate a vote in favor of our zoning application. I believe that Mr. Sudbury would like to say a word or two as well. Thank you."

BOB SUDBURY "Mr. Chair, Board members, I live at 7003 Mainsgate. I didn't know exactly what Mr. Nelson was going to say. He did say some things that I was going to say. If you will forgive me, I will be just a little bit repetitive. I will try to make it brief.

I have had my home-owned business for 23 years. When it was 6 years old, I moved on to Mainsgate Road at 6810. We operated our business there for 14 years. When we moved in there, one of the first things we did was to get a City license. I put it in a frame and hung it on the wall. It stayed there for 14 years. We never had any complaints from anybody about anything.

Three years ago, we moved into our new house. It is a nice house, built by a good contractor and cost well over \$200,000. It has a finished basement which we use as an office. We have been there about three years. So altogether, 23 years and we have never had a complaint until March 16. On that day, we did have one complaint

from one neighbor. Besides calling me, he also passed it on to the neighborhood association, who passed it on to the City. About a week after the complaint was made to me, Central Inspection came to see me."

MICHAELIS "Mr. Sudbury, your time is up. Do you need a couple more minutes?"

SUDBURY "My time is up?"

MICHAELIS "Yes. You are part of the application, and the total time you had was 10 minutes between what Mr. Nelson had to say and you."

MOTION: That the speaker's time be extended for 2 minutes.

MCKAY moved, **WARREN** seconded the motion.

SUDBURY "It seems to me that one complaint in 23 years would certainly indicate that I have not disturbed the neighborhood very much. I will say again that we have never allowed trucks to come into the neighborhood. In fact, with our contractors, they have been strictly forbidden to do that.

Once in a great while, it has happened accidentally. That is what happened on March 16. A big truck that we didn't know was here, driven by a man that we had never seen or heard of, and had no connection with us at all, did park on 25th Street and gave rise to that complaint. I would like to repeat that we have never allowed trucks to come into the neighborhood. We have never had customers come to our house. The staff report correctly states that all we do in the office is brokering and dispatching and the accounting related to the brokering and dispatching. That is all that happens in that office. We don't park on the street at all. There is an apron right across the street from us that is designed for parking, and we park there. None of our employees park on the street. We feel that the parking is under as good of control as you could imagine.

It will be a financial hardship to me if we have to move. It will be a cost of about \$3,000 a month to me. I am not a crybaby, but I will say that it will be a real financial hardship to me. I do not have any retirement income except Social Security. So if we have to move, we aren't going to close up, we will move, but it will be a dreadful financial hardship to us. I would appreciate your consideration."

MICHAELIS "Okay, we will open this up for questions. I would like to ask you is during this period of time, did you ever approach the homeowners' association and ask for permission to do this?"

SUDBURY "No. I have talked to many people about this, people who have businesses and so on, and the general consensus has been that as long as you keep a very low profile, don't disturb anybody and don't cause any problems, nobody really cares."

MICHAELIS "Well, the reason I asked that is that it is typically in their covenants that you can't do it without permission."

BARFIELD "Well, I think basically your question is the same that I would ask. With all due respect, the fact of the matter is that when he moved from one home to the second home, certainly these covenants were in place, and it appears to me is that as long as you don't get caught, it is all right."

MICHAELIS "Are there any further questions of the speaker? Okay. Thank you, sir. Is there anyone else in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to? Please come forward."

DAVID DONAHUE "I live at 2460 Longwood Circle. I am the President of the Sycamore Village Homeowners' Association. We have a homeowners' association which I believe is probably one of the largest in the City. We have 540 homes.

I was on the board when Mr. Sudbury presented his plans for his new home that he has now. Granted, it is a very pretty home. I was one of the people that talked to him about that in person, at which time we discussed the covenants, to include our covenant that says no homeowner businesses will be operated. At no time was it ever broached that he was planning on putting a business in the basement of his home. At no time did he ever try and get permission from the board—which you must get in writing—to do that kind of thing.

There are certain businesses that we may approve. We can do that. But generally speaking, we don't approve any of them. The reason for that is that those homeowners' are not interested in having businesses all over the place. Now I will say that we are aware that within 540 homes, there probably are a number of businesses operating. We do not go after or head hunt those people—until we get one complaint. As soon as we got one complaint, this particular one on Mr. Sudbury, we knew what was going on there—sort of—and we said that it

was a big enough deal that we would pass it to the City. They went out and this is how we got to where we are. Our covenants say none. You have a number of letters in your packet, talking about this particular subject, and I got a number of phone calls. Some of them were very irate—going like ‘what the hell is going on here’? So, I said that we were going to fight this as much as we can.

In their discussion, they never talk about covenants. Those covenants are agreed to by all homeowners before you buy in to our area. We are a covenant community and we are proud of it. It gives us some control over what goes on there. Mr. Sudbury has, to his credit, come to us for our support in his event with the City over this. We told him that we could not do it, nor would we do it, because it was in direct violation of our own covenants. And we can’t change our covenants without going to a 90% vote of the homeowners. I am sure that you have all experienced large groups, so getting 90% of any group to oppose or change your own covenants, it will never happen. Absolutely not.

So we, as the homeowners’ association are foursquare against this one. We feel that it is possible in this world to prefer to ask for forgiveness than to ask for permission. That is how we, as a board feel that this thing has gotten to where it is at. Thank you very much.”

BARFIELD “Sir, did I understand you to say that your neighborhood association does make exceptions to this rule?”

DONAHUE “Such things as Mary Kay. People that work out of their homes—there are doctors there that do architectural work, and administrative things, but business business—I don’t believe that we have, in the last 10 years, approved any. But we have the authority to do that. It does say in the covenants that you have to come to the board and request it and we have to approve it in writing.”

BARFIELD “One final question. Before this complaint, were you aware that he was operating this business?”

DONAHUE “No.”

WARREN “The parking spaces across the street have been referred to here as ‘the apron’. I would assume that the intent of that was for patrons of that park. Is that correct?”

DONAHUE “That is correct. Those parking spaces have nothing at all to do with Mr. Sudbury’s business, nor were they put there for his convenience. Those are for people who visit homes in the area or are using the park.”

GAROFALO “Before you contacted the City about this matter, did the applicant come to the board and ask for permission to do this?”

DONAHUE “No. It was after.”

MICHAELIS “Are there any further questions of the speaker? Thank you, sir. Is there anyone else here wishing to speak in opposition to? Please come forward.”

ALPHONSO WEST “I live at 7010 East 25th Street, just to the east of Mr. Sudbury. Looking at the picture, the parking spot is what I see every morning as I view out my front window or front door. You probably have received a letter that I have written you, from Alphonso and Rosie West in opposition to this business. I guess I am the center of attention, as far as the complaint. Mr. Sudbury had run, intentionally or unintentionally, 18-wheelers down through that neighborhood, and you can’t even park two cars on that street, let alone an 18-wheeler. There was parking on that street constantly, in the winter, summer, spring and fall, and it was a hazard. His employees were backing up onto property that I own, this is behind Mr. Sudbury, which is to the east. It is a vacant lot. I purchased that property. So the employees were backing up as they tried to back out of that designated parking for the homeowners’ association, backing up on my yard, and I complained about that. So, if you care to, just revisit the letter that Alphonzo and Rose West wrote you and take under consideration that I don’t like looking at 5 or 6 or 7 vehicles out my front door every morning, five days a week and sometimes on Saturdays and Sunday. I appreciate it. Thank you.”

MICHAELIS “Are there any questions of the speaker? Thank you, sir. Is there anyone else wishing to speak in opposition to this? All right, either Mr. Nelson or Mr. Sudbury has 2 minutes of rebuttal time.”

NELSON “Thank you, Mr. Chair. Very quickly, with regard to the issue of the restrictive covenants, I respectfully submit to this board that that is not a basis upon which you should rule whether or not this zone application should be approved or disapproved. That is a matter for the homeowners’ association to pick up and to take up over if they wish to do so in some other arena. Here it is not relevant. I understand the questions, but I submit to you that that is not a proper basis upon which to disapprove this application.

With respect to the parking matter, somebody referred to the 'park'. What you see there (indicating on slide) is 100% of the park area. There really is no park. It is a nice, open area, and there are very few houses in there, and nobody else is really ever using those spots for parking. I will reserve the rest of the time if you would like to speak."

MICHAELIS "Nothing else, okay. There are no other questions, so we will bring it back to the board."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The subject property is located within an entirely single-family residential neighborhood. All property surrounding the site is zoned "SF-5" Single-Family Residential and is developed with single-family residences or is open space. Therefore, office use of the subject property is inconsistent with the zoning, uses, and character of the neighborhood. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The subject property is developed with a viable, occupied single-family residential structure and, thus, is suitably restricted. Extent to which removal of the restrictions will detrimentally affect nearby property: The introduction of office uses into an entirely single-family residential neighborhood will have detrimental affects on nearby properties. The site is too small to accommodate office uses, as indicated by the current employee parking area located off-site in a reserve area maintained by the homeowner's association. Office uses also generate traffic, noise, trash and other nuisances that are detrimental to nearby residential uses. Permitting home-based office uses involving non-resident employees could establish a precedent that, if continued, could lead to a decline of the residential viability of nearby properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan indicates that the area is appropriate for "Low Density Residential" development. The proposed office use does not conform to the Land Use Guide. The Office Locational Guidelines of the 1999 Update to the Comprehensive Plan state that office uses should generally be located adjacent to arterial streets and should be incorporated within or adjacent to neighborhood and community scale, commercial development. The Office Locational Guidelines also state that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The proposed office use does not conform to the Official Locational Guidelines, as it is located in the heart of a residential neighborhood distant from arterial streets and commercial development and does not serve a transitional function between lower and higher intensity uses. Opposition or support of neighborhood residents: At the time this report was prepared, planning staff had received seven written statements (attached) from neighborhood residents indicating their opposition to the request.) I move that we recommend to the governing body that the request be denied, subject to staff recommendations.

BARFIELD moved, **COULTER** the motion.

PLATT "I am going to support the motion, but I would like to add that I am strongly opposed to the idea of expanding in-home occupations to include 4 or 5 employees."

BISHOP "I truly will just say that that expresses my feelings exactly. I don't think it has anything to do with the covenants or the homeowners' association, but based on City Ordinance and good planning principles, I think it prevails."

VOTE ON THE MOTION: The motion carried with 12 votes in favor.
There was no opposition.

6. **Case No. ZON2001-00035** – Set V. Nguyen & Nam T. Tran request zone change from “B” Multi-family and “SF-5” Single-Family Residential to “LC” Limited Commercial on property described as:

Lot 4, Newton Gardens Addition, Wichita, Sedgwick County, Kansas. Generally located northwest of the West Street-8th Street intersection.

BILL LONGNECKER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting consideration for a zoning change from “B” Multi-Family and “SF-5” Single Family Residential to “LC” Limited Commercial, on Lot 4, Newton Gardens Addition, for an automobile window tinting shop. This activity is classified as “vehicle repair limited” and a permitted use in “LC” Limited Commercial zoning. The applicant proposes to use the attached double garage for the window tinting business and continue to live in the house. The applicant will need to acquire the appropriate permits and inspections for this mixed use of the structure. Access to the proposed business will be through the existing curb cuts, a large “double wide” curb cut that is used by the applicant and the property to the south and a curb cut on the south side that serves as the drive way entrance to the attached double garage. The front yard of the site has been paved over with concrete, from the house to the curb with the exception of a small half moon grass spot with a tree in it. The requested zoning to “LC” Limited Commercial will permit the applicant to run an automotive window tinting shop, as well as motor vehicle repair or maintenance services within a completely enclosed building, but not including paint and body shops.

The site has occupied “SF-5”, Single Family Residential zoning abutting it on the east side. North and south of the site are lots zoned “LC” Limited Commercial with converted residential structures being used as a tax service, sewing shop and a beauty shop. Across West Street, on the west side, there are “LC” Limited Commercial and “B” Multi-Family zoned lots with auto repair or maintenance related businesses, local retail and office. Most of these businesses are in non-residential structures.

There have been numerous zoning changes on this section of West Street, from 8th Street on the south to the Zoo Blvd – West Street intersection on the north:

- (a) Z-2331 – From “AA” One Family & “B” Multifamily to “LC” Limited Commercial, located on the abutting south lot on the east side of West Street, approved in 1981.
- (b) Z-2738 – From “AA” One Family & “B” Multifamily to “LC” Limited Commercial, located 2 lots north of the site on the east side of West Street, approved in 1986.
- (c) Z-2366 – From “B” Multifamily to “LC” Limited Commercial, located between 10th and 9th on the east side of West Street, approved in 1981.
- (d) Z-3226 – From “B” Multifamily to “LC Limited Commercial, located across West Street west of the site, approved in 1997.

In these cases the change has been from “B” Multifamily and/or “AA” One Family to “LC” Limited Commercial zoning. The uses for these zoning changes have added office, local retail services and auto repair or maintenance related businesses to this section of West Street, which has eroded the desirability of residential uses on this street. This area is in transition from residential use to commercial zoning and uses.

The proposed development will trigger required landscaping (per approval by the Planning Director), screening and development according to City Codes. The applicant will need to dedicate 10-ft of ROW, bring the utility easements up to current standards and close the north curb cut.

CASE HISTORY: The property is Lot 4, Newton Gardens Addition, which was recorded November 22, 1948.

ADJACENT ZONING AND LAND USE:

NORTH: “LC” Limited Commercial	Office - Commercial
EAST: SF-5 Single Family	Residential
SOUTH: “LC” Limited Commercial	Office - Commercial
WEST: “B” Multifamily	Office - Commercial
“LC” Limited Commercial	

PUBLIC SERVICES: West is classified as a 5-lane arterial and 8th & 9th Streets are paved residential roads. The estimated traffic volume of (ADT) trips per day at the Zoo Boulevard - West Street intersection (the nearest major intersection, 1 ½ blocks north of the site) is 8255 ADTs on the west side, 15820 ADTs on the north side, 17060 ADTs on the east side and 16735 ADTs on the south side. Water/sewer and other municipal services are provided to the site.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as “Commercial”. Commercial location guidelines indicate that commercial uses should be adjacent to arterial streets and for those

commercial uses not located in strip centers to be guided to established areas of similar development and where traffic patterns, surrounding land uses and utilities can support such development.

RECOMMENDATION: Based on the information available prior to the public hearing, staff recommends the application be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The West Street corridor area from Zoo Boulevard on the north to Central on the south is zoned primarily "LC" Limited Commercial. The development is local retail, office, restaurants, auto repair limited and a used car sales lot. Non-residential zoning and development is generally confined to property abutting West Street with single family or multifamily residential behind it.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multifamily and "SF-5" Single Family Residential. It is currently developed with a single-family residence. Single-family residences on arterial roads have become less desirable for continued single-family use. The "B" portion of the yard is too small to develop for multifamily. These reasons make the current zoning not suitable.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by code required development standards.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request for an automotive window tinting shop in "LC" Limited Commercial is a permitted use per the Unified Zoning Code. The current zoning of "SF-5" Single Family Residential and "B" Multifamily is not called out as suitable for this site by the Comprehensive Plan; Commercial is.
5. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal.

Due to technical difficulties, a portion of the audio on this case was lost. (Most of what was lost was at the beginning of the case and was with regard to the question of which drive to close).

LONGNECKER "Staff is recommending consideration for approval of the zone change from 'SF-5' Single-Family Residential to 'LC' Limited Commercial, based on the criteria in your staff report. Staff has spoken with the applicant in regards to our recommendations and for their responsibility in getting all permits and inspections for the conversion of the garage not a non-residential use. That is where they will be tinting car windows. Are there any questions?"

BARFIELD "Are you saying then that an entrance would be closed and that the applicant has enough area for parking?"

JOHNSON "If this is approved, where would it be closed?"

LONGNECKER "I think the parking requirements there would dictate which would be closed, that is the available area for parking and circulation would determine which entrance was closed."

BISHOP "Did the District Advisory Board consider this?"

LONGNECKER "District Advisory Board VI voted to approve the zoning change 7-0."

KROUT "Do you have any idea if they had any concerns about the development?"

LONGNECKER "They did, and staff recommended that this would be addressed by the applicant when obtaining permits."

MICHAELIS "May we hear from the applicant?"

NAM TRAN "I live at 916 North West Street. I am kind of nervous. We want to have a business there. On the north side, they have Limited Commercial and on the south side. We are the only residential in the area, so I hope that we can have the opportunity to change the zoning here at this time. Thank you."

MICHAELIS "Are there any questions of the applicant?"

BARFIELD "Are you saying that you have ample parking for 3 to 4 vehicles in the front, or are you including the side over there?"

TRAN (Indicating) "We have this driveway, all the way in here, and back to the side of the house. So there are like two more parking spaces there, and in this area, we have like two more in here besides the driveway."

MICHAELIS "Are there any further questions of the applicant? Thank you, ma'am. Is there anyone else in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to? Okay. We will bring it back to the Commission."

TRAN "Thank you."

WARREN "I am very much in favor of the applicant's request to go ahead with this. I am concerned because we have become almost obsessed with closing these drive approaches, and I understand that from a traffic point of view; however, in this case, and from the configuration of that house on that lot, I can see people trying to back out onto West Street. I think, in this case, that those driveways—although they may be limited in size, it looks like some of them are pretty wide open—but I think we maybe need that double drive in there in order to facilitate this, and it may be an in/out situation that we were going to require. I would have no objection—I would have to rely on Marvin, maybe—for how we could do it, and that would be that in the event that that building is destroyed and taken out of there, then one drive would be closed. Obviously, then, they would be building probably further back on the lot and you could get with the Traffic Department."

MICHAELIS "That would be a requirement."

KROUT "I agree with you absolutely. That is what I was going to recommend to you. I think we talked in general about the fact that there are two driveways on this property. I didn't see this picture and understand the situation. Usually an auto repair shop is on a large enough lot, deep enough to where you do want access. I think that you can require a dedication of 10 feet of right-of-way, like we would normally on this, because we are not asking him to replat the property. Also require a contingent dedication to limit the access to one, the contingency being if the existing building is demolished and the site is rebuilt."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. The West Street corridor area from Zoo Boulevard on the north to Central on the south is zoned primarily "LC" Limited Commercial. The development is local retail, office, restaurants, auto repair limited and a used car sales lot. Non-residential zoning and development is generally confined to property abutting West Street with single family or multifamily residential behind it. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multifamily and "SF-5" Single Family Residential. It is currently developed with a single-family residence. Single-family residences on arterial roads have become less desirable for continued single-family use. The "B" portion of the yard is too small to develop for multifamily. These reasons make the current zoning not suitable. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by code required development standards. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request for an automotive window tinting shop in "LC" Limited Commercial is a permitted use per the Unified Zoning Code. The current zoning of "SF-5" Single Family Residential and "B" Multifamily is not called out as suitable for this site by the Comprehensive Plan; Commercial is. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal.) I move that we recommend to the governing bodies that the request be approved, subject to the following:

1. A dedication of 10 feet of right-of-way.
2. A contingent dedication to limit the access to one, the contingency being if the existing building is demolished and the site is rebuilt.
3. Dedicate an additional 2-foot to the 8 foot utility easement to bring it to compliance with current standards.

WARREN moved, **JOHNSON** seconded the motion, and it carried unanimously (12-0).

7. **Case No. ZON2001-00036** – Springcreek Resources LLC c/o J. William Owen and Charles W. Aikins (Owner/Applicant); Baughman Company PA c/o Terry Smythe and John T. Arnold Associates c/o Don Arnold, Jr. (Agents) request zone change from "SF-5" Single-Family Residential to "GO" General Office, on property described as:

That part of the Northeast Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as beginning at the Northeast Corner of said Northeast Quarter; thence South 00 degrees 00'00" West along the East line of said Northeast Quarter, 1399.49 feet; thence South 90 degrees 00'00" West, 150.00 feet; thence North 35 degrees 30'42" West, 400.00 feet; thence North 43 degrees 17'04" West, 400.00 feet; thence North 47 degrees 48'49" West, 400.00 feet; thence North 53 degrees 28'12" West, 315.00 feet; thence North 31 degrees 39'38" West, 350.98 feet to the North line of said Northeast Quarter; thence North 88 degrees 51'10" East along the North line of said Northeast Quarter, 1390.60 feet to the place of beginning, EXCEPT that part platted as Vyne Addition, Wichita, Sedgwick County, Kansas. Generally located on the southwest corner of Maple and 119th Street West.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "SF-5" Single-Family Residential to "GO" General Office on a 12.5 acre unplatted tract located at the southwest corner of Maple and 119th Street West. The applicant proposes to develop the subject property with office uses. The applicant also proposes a Protective Overlay to limit uses and multi-family density.

The surrounding area is characterized by residential uses on the developing fringe of Wichita with significant amounts of parkland in the area. The properties north of the site across Maple are zoned "SF-5" Single Family Residential and are developed with single-family residences. The properties east of the site across 119th Street West are zoned "SF-5" Single-Family Residential and are developed with single-family residences and West Millbrook Park. The property south of the site is zoned "SF-5" Single-Family Residential and is The Meadows Park. The property west of the site is zoned "B" Multi-Family Residential and is developed with an assisted living facility.

CASE HISTORY: In 1994, a 3.4 acre tract on the subject property located immediately at the southwest corner of Maple and 119th Street West was requested (Z-3143) for "BB" Office District (now "GO" General Office) along with a request for "B" Multi-Family zoning on a 9.6 acre tract located west of the subject property. On August 11, 1994, the MAPC voted (6-5) to approve the request subject to platting, obtaining necessary wetland permits, and filing a restrictive covenant regarding permitted uses, architectural design, building height, residential density, lighting, and landscaping. On September 13, 1994, the City Council considered the request and referred the matter back to the MAPC. At the rehearing on October 6, 1994, the MAPC voted (9-3) to approve the request subject to the same conditions. On October 31, 1994, the applicant withdrew the request for "BB" Office District zoning on the 3.4 acre tract. The City Council approved "B" Multi-Family zoning on the 9.6 acre tract located west of the subject property on November 1, 1994, subject to the recommended conditions. Written protest petitions representing 22.6% of the land area within 200 feet of the subject property were filed against the request. A petition signed by 643 area residents and numerous letters also were submitted protesting the request. The CPO for District 5 twice voted (5-1 on August 10, 1994 and 5-3 on September 28, 1994) to disapprove the request.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family residences
SOUTH: "SF-5" The Meadows Park
EAST: "SF-5" Single-family residences; West Millbrook Park
WEST: "B" Assisted living facility

PUBLIC SERVICES: The site has frontage along both Maple and 119th Street North. Maple and 119th Street West are both two-lane arterials along the site's frontage; however, the intersection of Maple and 119th Street West has recently been improved to four lanes with turn lanes and acceleration lanes. The 2001-2010 Capital Improvement Program contains projects to widen both Maple (in 2001) and 119th Street West (in 2010) to four or five lanes along the site's frontage. Along the site's frontage, 119th Street West currently carries approximately 6,700 vehicles per day and is projected by the 2030 Transportation Plan to increase to approximately 12,100 vehicles per

day. Maple currently carries approximately 5,700 vehicles per day and is projected by the 2030 Transportation Plan to increase to approximately 12,500 vehicles per day. The 2030 Transportation Plan assumed the subject property would develop with commercial uses in calculating these projected traffic increases. Approximately the southern 1,000 feet of the subject property is within the flood plain, with only a 300-foot by 325-foot tract (once road right-of-way is dedicated) immediately at the southwest corner of Maple and 119th Street West outside the flood plain. Public water and sewer service are available to be extended to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as a location where future commercial development is likely. The Far West Side Commercial Development Policy, adopted by the City Council in 1996, indicates that the scale of commercial development at the intersection of Maple & 119th Street West should be limited to a total of eight acres with no more than four acres of commercial development on any one corner. The Far West Side Commercial Development Policy indicates that individual office businesses on the subject property should be limited to 8,000 square feet in size. The Far West Side Commercial Development Policy also recommends that the appearance of commercial development should have certain characteristics in terms of signage, lighting, landscaping, and architectural design. The Office Locational Guidelines of the Comprehensive Plan recommend that office uses be located adjacent to arterial streets and incorporated within or adjacent to commercial development.

RECOMMENDATION: Planning staff finds that the subject property is appropriate for office development; however, the scale and intensity of office development requested is significantly greater than recommended by the Far West Side Commercial Development Policy. In addition, the Far West Side Commercial Development Policy recommends that the appearance of commercial development should have certain characteristics in terms of signage, lighting, landscaping, and architectural design; therefore, planning staff recommends conditions of a Protective Overlay to require the property to be developed with these appearance characteristics. The applicant has offered to limit uses and multi-family density on the subject property. With the exception of group homes, none of the uses offered to be restricted by the applicant are permitted by right in the "NO" Neighborhood Office district, which also limits the size of individual businesses and the height of buildings consistent with the Far West Side Commercial Development Policy. The "NO" Neighborhood Office district also requires a Conditional Use for multi-family and assisted living so that density and design issues can be more specifically addressed to ensure compatibility with nearby single-family residences. Finally, planning staff recommends that the rezoning be limited to the north 300 feet of the subject property (once road right-of-way is dedicated), which conforms with the scale of business development recommended by the Far West Side Commercial Development Policy and corresponds to the area that was requested by the applicant for office zoning in 1994. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request for "GO" General Office be DENIED and instead that "NO" Neighborhood Office be APPROVED, but only for that portion of the subject property that is located north of a line that is 350 feet south of and parallel to the north line of Section 25, Township 27 South, Range 2 West. Approval is recommended subject platting within one year and the following provisions of a Protective Overlay District:

1. Ground signage shall be monument type and shall be limited to 12 feet in height. Ground signage shall be limited to one sign per arterial street frontage.
2. All exterior lighting shall be shielded to prevent light disbursement in a northerly or easterly direction. Light poles shall be limited to 14 feet in height. Backlit canopies and neon or fluorescent lighting on buildings shall not be permitted.
3. Requirements for landscaped street yard and landscaped buffers shall be 1.5 times the minimum requirements of the Landscape Ordinance.
4. The buildings shall be designed with a residential architectural character, with at least 40% of the wall area on each facade in brick. All buildings shall share uniform architectural character, color, texture, and the same predominate exterior building materials. Building roofs shall be similar in texture or pattern to the surrounding residential areas and shall be gable or hip in style.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by residential uses on the developing fringe of Wichita with significant amounts of parkland in the area. With the exception of the property to the west that is zoned "B" Multi-Family Residential and is developed with an assisted living facility, all of the property surrounding the site is zoned "SF-5" Single-Family Residential and is either developed with single-family residences or is park land. Business development that is limited in scale and located in buildings with a residential character should not change the character of existing residential uses in the area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The site is suitable for single-family residential uses; however, the Comprehensive Plan recognizes that business development of the site is likely due to its location at the intersection of two arterial streets. The Far West Side Commercial Development Policy indicates that business development on the site should be limited in scale; therefore, the recommendation is to support limited business development immediately at the corner and restrict the remainder of the site to the single-family and complementary uses such as churches for which it is suited.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by limiting the scale of business development to the property immediately at the corner of Maple and 119th Street West. The recommended "NO" Neighborhood Office district and the provisions of a Protective Overlay will limit uses; require a Conditional Use for multi-family or assisted living; will limit business size, building height, signage, and lighting; and will require increased landscaping and residential architectural character. The factors should further limit detrimental affects on nearby properties. Additionally, the subject property is separated from adjacent single-family residences properties by arterial streets, and the residences across the street from the portion of the property recommended for rezoning are oriented such that the rear of the residences face the subject property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as a location where future commercial development is likely. The Far West Side Commercial Development Policy indicates that the scale of commercial development at the intersection of Maple & 119th Street West should be limited to a total of eight acres with no more than four acres of commercial development on any one corner. The Far West Side Commercial Development Policy indicates that individual office businesses on the subject property should be limited to 8,000 square feet in size. The Far West Side Commercial Development Policy also recommends that the appearance of commercial development should have certain characteristics in terms of signage, lighting, landscaping, and architectural design. The Office Locational Guidelines of the Comprehensive Plan recommend that office uses be located adjacent to arterial streets and incorporated within or adjacent to commercial development. The rezoning of only the property located immediately at the corner of Maple and 119th Street West to "NO" Neighborhood Office with the provisions of a Protective Overlay District conforms to the Comprehensive Plan and policies.
5. Impact of the proposed development on community facilities: Community facilities are adequate to address the additional traffic generated by the development with the recent widening of the intersection of Maple & 119th Street West and the planned improvements to those streets in the CIP.

KNEBEL "This is a request for zone change seeking 'GO' General Office zoning on the southwest corner of 119th Street West and Maple. The property is currently zoned 'SF-5', Single-Family Residential. The site is 12.5 acres of unplatted ground. The applicant is requesting 'GO' and is also offering a Protective Overlay. I failed to attach the Protective Overlay that the applicant is offering to the staff report, so I passed it around afterwards—and there is also a site layout, I guess, not a real site plan of any development—attached to that Protective Overlay that I passed around prior to the meeting.

The surrounding area is primarily residential. There are quite a number of acres of park ground, both to the west and to the east of this particular site. There are residences to the north and to the northeast of the site. There are residences to the south and a park on the east side of 119th, and an assisted living facility to the west and more single-family residences to the northwest. This particular property has been requested for rezoning before, back in 1994. At the time, the applicant requested a tract that looked essentially like this (indicating). About 9-1/2 or 10 acres for the assisted living facility where they requested 'B' Multi-Family and then a square tract at the corner north of this point for 'BB' office at that time, which is now the 'GO' General Office district. That particular request was first approved by the Planning Commission, who recommended approval subject to platting, obtaining necessary Wetland permits and filing, at the time, a Restrictive Covenant, which we now use as Protective Overlays regarding limiting the permitted uses, the architectural design of the buildings, the height of the buildings, the density of the residential structures, the limitations on the lighting and additional requirements for landscaping.

This recommendation was sent to the City Council, who referred it back to the Planning Commission. The Planning Commission reheard it and actually had a couple of members change their votes to a more affirmative vote with the same recommended conditions. Subsequent to that, the applicant withdrew the request for the Office zoning and proceeded with the Multi-Family zoning, which was approved, and the Assisted Living facility was constructed. There were a number of protests which are described both in written form and in meeting attendance when that request was considered back in 1994.

This particular site has frontage along 119th Street and frontage along Maple. Those streets are both two-lane

arterials, which are programmed in the City's Capital Improvement program to be widened to four lanes or five lanes. Maple is proposed to be done this year; 119th will be done in 2010, is the current schedule. The intersection along the frontage has recently been improved, and has four lanes of through traffic at the intersection only, and then also turn lanes and acceleration lanes.

This particular property is primarily located within the Flood Plain; essentially the south 1,000 feet portion of the property is located either within the 100 or the 500-year Flood Plain. As far as the Comprehensive Plan and any other policies are concerned, this particular property is identified in the Land Use Guide as a site where future commercial development is likely.

The City Council adopted the Far West Side commercial development policy in 1996. That policy indicates that the scale of commercial development at this particular intersection should be limited to a total of 8 acres with no more than four acres of development on any single corner. That policy also indicates that individual businesses in this location should be limited to 8,000 square feet in size and that the design or appearance of those businesses should have certain characteristics in terms of signage, lighting, and landscaping and architectural design. I have attached a copy of that policy to the staff report to provide greater detail. I can go into more detail on those points if you want, but will only do so if asked.

In reviewing this request, the Planning staff did find that the property is appropriate for office development at this particular location; however, we do believe that the scale and intensity that is requested is greater than what is recommended by the Far West Side commercial development policy. That policy also recommends the appearance criteria that I described previously and the applicant did not offer anything in terms of site design features or anything that we could use to ensure that the property would be developed with those features, so we are recommending conditions of a Protective Overlay that deal with signage, lighting, landscaping and architectural design.

The applicant, as I mentioned previously, requested General Office with a Protective Overlay to limit a number of uses. In reviewing and comparing the applicant's request to the Neighborhood Office zoning district, the group homes is really the only item on the list that the applicant has agreed to not permit on the property that would be permitted in the Neighborhood Office zoning district. All of those items on that Protective Overlay list the applicant has agreed not to permit are already not permitted by the Neighborhood Office zoning district, with the exception of group homes. Additionally, the Neighborhood Office district already provides limitations on multi-family density and requires a Conditional Use permit in order to ensure that there is design review of any multi-family development or assisted living development that would occur on the property.

So the Planning staff is recommending that rather than General Office, that is requested by the applicant, that Neighborhood Office be approved instead. In addition to that, the size, the amount of the property that the applicant is requesting exceeds the four acres that the West Side Commercial Development policy says should be limited to on a single corner. Staff is recommending that essentially the area that was requested for rezoning in 1994—that portion that is located outside the Flood Plain—be the only portion of the property that is approved for rezoning. That is the property north of the line (indicating) approximately in this location here. So we are recommending that the General Office be denied and instead that Neighborhood Office be approved for only a portion of the property and that that be subject to conditions of a Protective Overlay, which would limit the type and height of signs, would limit the quantity of signs to one per street frontage, would put limitations on the height of light poles and the type of lighting to be used, would require landscaping at 1-1/2 times the minimum requirements of the Landscape Ordinance, which has been a common requirement in CUPs and other approvals of commercial development in this particular area and further west of here.

We are also requiring that the buildings would have a residential architectural character with at least 40% of the wall area in brick and would share a common architectural design, color and texture as the other buildings on the site, and that also the roofs would match the roof type and material as the residential area surrounding that. We are basing this recommending on the findings on Pages 4 and 5 of the staff report. I can go through those in detail, if you want. I have mentioned most of the points that are listed in those findings. With that, I will just stop and answer any questions.

One thing I might mention that I didn't mention previously, there are a couple of letters, one from Ms. Keeler and one from Mr. and Mrs. Johnston that I passed out regarding this that we received after we had mailed out the staff reports. The other issue is that the District Advisory Board hearing on this will be July 9. They have not had a chance to hear this request at this point."

MICHAELIS "Are there any questions of staff? Thank you, Mr. Knebel. May we hear from the applicant, please?"

MCKAY "Mr. Chair, I would like to make it part of the record that I used to own this ground and the ground around it, and was one of the parties that developed the Auburn Hills golf course, which is part of the piece of ground to the west of this whole area, which is now a park, which we sold to the City of Wichita. Let that be on the

record."

TERRY SMYTHE "I am with the Baughman Company, here on behalf of the applicant. Just a point of clarification—the handout that Scott gave you, a two-page handout—the first part of it is the Protective Overlay. We agreed to give up the uses with the General Office zoning that we requested. I will explain that a little bit better in a minute.

The second handout, and that is the 11 x 17, is the explanation of the acres that we are going to ask for the rezoning on. When we do the legal descriptions for the zone changes, we always take them out to the center line of the streets to make sure that there is no little sliver of ground left over that doesn't get zoned. When we originally asked for the zoning I think it was somewhere around 12 acres, subtracting out the street right-of-way. We have since come back through here and looked at how the Vyne was platted (indicating) down here, and there is a floodway area down along there that we have done some calculations that will eliminate a strip of property along here (indicating). When we eliminate those strips—and that is that second big hand-out that you got—when you eliminate the street right-of-way from our request and the flood way reserve from our request, we are down to 8.51 acres of zoning request.

Now if you remember, the Far West Side Policy, particularly in this corner, and this corner was established when that Policy was there, the other three corners already had single-family on it. The Policy indicates that 8 acres is appropriate, only they had preferred that it be four acres on individual corners. Since these other corners were already established residentially, we are requesting the 8 acres on the remaining corner. We are at 8.51, we have a small half-acre left over and we think that when you get down here to the far south side of this property, there is going to be some really unusable pieces from our standpoint. But we think the 8.51 acres is in compliance with the Far West Side Policy acreage requirement. So that kind of explains the big hand out.

But we are requesting today to eliminate the Flood way from our zone change request. We approached this slightly different than the Planning staff did. We went to the General Office zoning district and backed out a lot of uses that we didn't feel was appropriate for this site. I think the Planning staff went to the Neighborhood Office, wrote it up to that level and stopped. We took it to 'GO' and brought it down to almost the same uses agreed upon. There are a few uses that we think apply to this area that we are asking for the 'GO' General Office zoning with a Protective Overlay. One of those uses are convalescent homes. If we have Neighborhood Office zoning, that is now allowed in that district, so we are asking for the 'GO' to allow us to give ourselves a couple of additional uses that we feel are appropriate for this corner, as well as give us some options on some Conditional Uses that occur in the General Office zoning district. Things like personal improvement, personal care. We feel that with the assisted living here, and potentially maybe some additional assisted living or convalescent care-type of facilities, or there may be a demand for small beauty shops or those kinds of uses that some of the seniors use without having to travel a great distance. They could potentially walk to this site.

So that is why we asked for the 'GO' General Office district, just to give us a few extra options, both permitted outright as well as an additional hearing for the Conditional Uses. If anybody have any questions about that part—that is how we approached it. I think we almost came back to the same level as Marvin and his staff; we just have a few little additional uses that we think are appropriate for this location.

If you will look at the staff comments, there are a number of reasons where we have run some numbers, and we think this is going to be very difficult to sell economically for single-family housing. This site has to be filled as well as every other site in this whole area, quite frankly, had to be filled to make it developable. The preliminary numbers and some of the developers who looked at this property have indicated that with that kind of fill quantity, single-family zoning itself and single-family housing would be pretty darn costly and it would probably be out of the market to do this. This is why we are asking for a little bit higher uses, rather than single-family. We just don't think it will develop single-family because of the fill cost.

We would like, quite frankly, to have all 8.51 acres of the General Office zoning district, subject to the Protective Overlay apply to this whole property. On Page 4 of your staff comments, there are four provisions that quite frankly, for the most part, apply to what was discussed in the Far West Side Policy five or six years ago. Provision Nos. 1, 2 and 3 were intended to be part of that Far West Side Policy. I guess they wanted some of these non-residential areas to be a little nicer than other ones. So that has been pretty consistent. My only discussion, I guess is with No. 4 where they talk about 40% of the surface of the wall area on each façade be in brick. In driving the area a number of times, of all of the houses that back up to this area, none of them have brick on that back side. So we feel, on behalf of the client, that the provision to require 40% brick coverage is not really in keeping with all of the other architectural elements out there. So we are going to ask, I guess, that you look at No. 4, the provision for the 40% wall area in brick be eliminated. That doesn't mean that it couldn't happen later, but the rest of the homes out there don't have brick, and we just don't think right now that this requirement should be put on this piece of property.

Other than that, the three other requirements, I think, are in keeping with the Far West Side Policy that was

debated to death 6 years ago. There were lots of meetings, and this is kind of what came out. This policy has been used on the west side on a number of my cases over the years, and it seems to work reasonably well. I didn't come out bleeding too badly, so I can't really argue with it too much. The case at 135th and Maple about 2 years ago, they exceeded that Far West Side Policy acreage requirement because there was a little left-over strip between the commercial and the residential, so there is a little case history saying that the 8 acres that they talk about is a policy guideline, I think. You've got to fit it to the land that is out there.

Prior to this case even being put together, I approached the applicant—about a year ago—when Maple was being looked at and reconstructed. Just as a note—a brownie point if you will—this applicant agreed to dedicate that street right-of-way over a year and a half ago, just to kind of keep that project going on. He fully realized that at some point in time he was going to have me stand up in front of the Commission here and ask for zoning and plat it. It would have to be dedicated anyway, but he did it up front a couple of years ago, fully realizing that that would improve this intersection. With that, I will stand for any other questions."

KROUT "I have two questions. You questioned the 40% brick, and the reason we were suggesting something more specific than had been offered as a restriction on the parcel immediately abutting to the west is because of the experience we had with that parcel. It didn't have any wording as to specifics of materials, and it left a lot to interpretation. The assisted living project, The Vyne was built, and Central Inspection and Planning who had the responsibility for it, tried to interpret that language and say that it does or doesn't fit in terms of materials, but had to agree that it did. But we also did have to agree that with the neighborhood that it didn't really meet the spirit that we thought was offered at the time. So we were looking for something more specific, realizing that not every house out there has brick, but that that at least breaks up the materials and offers something of stability that people recognize with residential. The question is, can you offer some other alternative suggestion to provide some more assurance to the neighborhood who was very disappointed at the architecture that resulted on the parcel to the west."

SMYTHE "At this point in time, no I can't. I think the applicant has looked at the Far West Side Policy—it is in your packet on Page 3, Item D—where it strictly states that architectural treatments which are initially consistent with the development and are compatible with the surrounding residential developments in terms of exterior colors, materials and roof forms. We have all lived through what happened out at The Vyne, and I think it turned out less than what some people thought."

KROUT "And I guess we thought that providing the brick would provide a little leverage for the staff reviewing it so that if he came in with something that met the spirit but didn't have the 40% brick, it would be something that we could administratively adjust. That was kind of the thought process here."

My other question is, did I hear you right that you said that it would not be economical to do Single-Family because of the fill that would be required, but you did admit that other single-family in this area has been built on fill with a wider floodway."

SMYTHE "Yes and no. On our site, there is an amount of fill that we have to put back here to make it work. Fifteen or so years ago when this whole area was put together—I mean the people who are out there living today are out there living today because the property has been filled. In this case, there was a lot larger economy of scale, in terms of this lake, taking the dirt out, putting it on the sides to allow residential to happen. Unfortunately, when you get down to the smaller, roughly 8 acres of zoning or land, that economies of scale of moving dirt really goes away."

KROUT "Of course, you used to have a bigger site."

SMYTHE "We would be glad to have more zoning if you would give it to us."

MCKAY "Terry, on this handout that you gave us, you are showing a floodway on the west side of this at an angle?"

SMYTHE "Yes."

MCKAY "There is also a sewer line that goes through that. Is that the same width of the easement?"

SMYTHE "The flood way that you see on this drawing is strictly a line that has been determined to be the future flood way limits."

MCKAY "In that flood way line that you have there, there is a sewer line. That is where they ran the County sewer line before it was all developed to the west. It came through there and went down Maple Street to the west and back into Auburn Hills and then went south. My question is, do you know that there may be more land taken away than you have mentioned here as flood way, that's all. There is a sewer line that runs parallel to that creek."

SMYTHE "Okay, I will make a note of that."

MCKAY "I am just saying that that easement may be wider than what you show. That may be the exact easement, but there is a sewer line in that floodway easement."

BARFIELD "I just want to ask you on No. 4 for clarification, are you saying that you are opposed to all of No. 4, or just the first sentence?"

SMYTHE "Really just the first sentence about the brick issue. I guess our preference—and it is strictly semantics—our preference would be if you went back to the original Far West Side Policy on Page 3, No. D, we would prefer that kind of phrasing of the architectural requirements. But it is really the brick issue. At this point in time, the client has not given me permission to offer brick up. I don't think he can, quite frankly. And we think that there are other things that can be done out there that would be compatible with the neighborhood considering the exterior of the rest of the homes out there.

GAROFALO "Just for my clarification—you are asking for the whole parcel to be rezoned?"

SMYTHE "We are asking that the flood way not be part of the zoning application. Our original application was approximately 12 acres and because quite frankly, the flood way is an area that we can't touch, I have eliminated that from the request."

BARFIELD "Also, on this list here, are you requesting that if this were to be approved at 'NO' that group residences be eliminated from this list?"

SMYTHE "No, this list really only applies if you look at how we filed the application, which was we are filing for General Office zoning and eliminated all of these uses. If you look at it from particularly the way staff is looking at it, they are looking at it like going up to the 'NO' district and stop us right there. The 'NO' district does not allow a lot of these uses; the 'NO' district does not allow the convalescent care facility options that we have, or a few of the other conditional use options that are allowed in the 'GO'. So if you look at it strictly from the Neighborhood Office district, this chart doesn't make sense."

MICHAELIS "Thank you, Mr. Smith. Is there anyone in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to it? Seeing none, I will bring it back to the Commission."

WARREN "In driving out to look at this property, I think the first thing that came to my mind was what should it not be used for? And with 119th Street going four lanes, with Maple going four lanes, with the obvious increase in traffic with or without any development here the one thing that it should not be is residential. I think that would be poor planning on our part. So then it becomes, if it is not residential, what is it? I think General Office, as they projected, with a Protective Overlay is very reasonable. The thing that I.....hey, let's let him talk?"

KROUT "I just suggest that you keep your comments—and I have mentioned this to other commissioners, too, in the past—try to focus on asking questions until the hearing is over."

WARREN "I thought the hearing was over."

MICHAELIS "The hearing is closed."

KROUT "There isn't anybody here to speak? The hearing is closed? I'm sorry, Ray."

Laughter here.

WARREN "Come on now, Director. Okay. The other problem I see is that if we go back to Neighborhood Office is that—and we run into this all of the time—something comes before us that is a reasonable request, something that we want to grant, and all of a sudden somebody says, 'well we would like to do that, but we can't do that in Limited Commercial'. There is no way we can grant a waiver. That is what we are doing if we go to Neighborhood Office, so I would like to keep it at the General Office that they have asked for with a Protective Overlay."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the following findings (The zoning, uses and character of the neighborhood: The surrounding area is characterized by residential uses on the developing fringe of Wichita with significant amounts of park land in the area. With the exception of the property to the west that is zoned "B" Multi-Family Residential and is

developed with an assisted living facility, all of the property surrounding the site is zoned "SF-5" Single-Family Residential and is either developed with single-family residences or is park land. Business development that is located in buildings with a residential character should not change the character of existing residential uses in the area. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The site is suitable for single-family residential uses; however, the Comprehensive Plan recognizes that business development of the site is likely due to its location at the intersection of two arterial streets. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the provisions of a Protective Overlay that will limit uses, signage, and lighting, and will require increased landscaping and residential architectural character. Additionally, the subject property is separated from adjacent single-family residences properties by arterial streets, and the residences across the street from the portion of the property recommended for rezoning are oriented such that the rear of the residences face the subject property. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as a location where future commercial development is likely. The Far West Side Commercial Development Policy recommends that the appearance of commercial development should have certain characteristics in terms of signage, lighting, landscaping, and architectural design. The Office Locational Guidelines of the Comprehensive Plan recommend that office uses be located adjacent to arterial streets and incorporated within or adjacent to commercial development. With the provisions of a Protective Overlay District, the request conforms to the Comprehensive Plan and policies. Impact of the proposed development on community facilities: Community facilities are adequate to address the additional traffic generated by the development with the recent widening of the intersection of Maple & 119th Street West and the planned improvements to those streets in the CIP.) I move that we recommend to the governing body that the General Office zoning be approved subject to platting within one year and the following provisions of Protective Overlay District #99:

1. The following uses shall not be permitted: group residence, limited and general; cemetery; correctional placement residence, limited and general; group home, limited, general, and commercial; animal care, limited; bed & breakfast inn; broadcast/recording studio; heliport; hotel/motel; marine facility, recreational; vocational school; warehouse, self-service storage; parking area, commercial; mining or quarrying; oil or gas drilling; rock crushing; and solid waste incinerator.
2. Multi-family density shall be limited to 17.4 units per acre.
3. Ground signage shall be monument type and shall be limited to 12 feet in height. Ground signage shall be limited to one sign per arterial street frontage.
4. All exterior lighting shall be shielded to prevent light disbursement in a northerly or easterly direction. Light poles shall be limited to 14 feet in height. Backlit canopies and neon or fluorescent lighting on buildings shall not be permitted.
5. Requirements for landscaped street yard and landscaped buffers shall be 1.5 times the minimum requirements of the Landscape Ordinance.
6. The buildings shall be designed with a residential architectural character, with exterior colors and materials compatible with surrounding residential areas. All buildings shall share uniform architectural character, color, texture, and the same predominate exterior building materials. Building roofs shall be similar in texture or pattern to the surrounding residential areas and shall be gable or hip in style.

WARREN moved, **HENTZEN** seconded the motion.

JOHNSON "Marvin, since the golf course came in after that Far West Side Plan, has there been any update to that plan since that?"

KROUT "No, we haven't updated the plan. It is just amazing to me that there isn't anybody here this afternoon after 600 people signed a petition on the case that we had for the Vyne next door to this."

MICHAELIS "Marvin, there really isn't anybody here."

(Laughter here)

KROUT "I understand that, but my guess is that they will be at the DAB meeting in a couple of weeks, and maybe this will come back. But there hasn't been any update on the plan."

WARREN "I want to be sure to make note that want to include the Protective Overlay in my motion if I didn't."

MICHAELIS "You did."

MCKAY "I want a clarification. I know, for a fact, that there is a sewer line I that floodway. This may not be 8.5 acres if the easement for that is wider. I think that needs to be clarified."

MICHAELIS "That would reduce the area accordingly."

MCKAY "Yeah, because in the motion he said 8.5 and it may not be 8.5."

KROUT "But I think you would still want to zone it if you wanted to use it for, let's say, for parking associated office uses."

BISHOP "I would like a clarification about the DAB meeting. It is scheduled for July 9 after the Planning Commission has met. My question is why?"

KNEBEL "The District Advisory Boards typically meet once a month. We did offer them the opportunity to meet this week like District VI did, and they weren't able to put that meeting together. July 9 is the meeting date that they set."

BISHOP "I have an additional question. Has there been any community/neighborhood consideration of this case? Has the developer met with the neighbors?"

KNEBEL "I am not aware of anything."

BISHOP "So if that is the information we have, I am not able to support the motion."

GAROFALO "For clarification for me, if this were to be approved as the motion was made, how does that jibe with the West Side Commercial Policy?"

KNEBEL "I think that the two things that the General Office district doesn't accomplish that the Neighborhood Office district does accomplish that is consistent with that Far West Side Policy is the limitation of individual business sizes to 8,000 square feet, which is not a requirement of the General Office district. Then also, the maximum building height permitted in General Office is 60 feet whereas it is 35 feet in Neighborhood Office. I think those are the two major diversions from that Far West Side Policy, based on this particular motion."

GAROFALO "And the acreage?"

KNEBEL "Well, right, and then the acreage as well. But I think that is obvious."

GAROFALO "The acreage is greater than what the West Side Policy allows, is that what your are saying?"

KNEBEL "Well, right. The Policy says 4 acres per corner."

GAROFALO "Per corner, right. And that is why you had recommended the.."

KNEBEL "The small area, that's right."

MICHAELIS "Is there any further discussion on the motion?"

VOTE ON THE MOTION: The motion carried with 10 votes in favor (Hentzen, Marnell, Johnson, Warren, Warner, Coulter, Garofalo, Barfield, Michaelis and McKay), and 2 in opposition (Platt and Bishop).

8. **Case No. CON2001-00030** – Conditional Use to operate a Day Care Center, General within church facility, on property described as:

Lot 1, Block 3, Lindsay's Orchard Addition, Wichita, Sedgwick County, Kansas. Generally located northwest of the Maize Road – Pawnee Avenue Intersection (2139 S Maize Road).

BILL LONGNECKER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant, Park Place Assembly of God Church, is requesting consideration and recommendation for a Conditional Use to allow a "Day Care, General", on property zoned "SF-5" Single Family Residential. The Unified Zoning Code requires a Conditional Use when a "Day Care, General", is located in "SF-5" Single Family Residential zoning. The property (9.09 acres) is described as Lot 1, Block 3, Lindsay's Orchard Addition, located northwest of the Pawnee Avenue – Maize Road intersection.

The applicant proposes to provide day care for approximately 30-60 children in approximately 10,250 sq.-ft. of the approximately 23,000 sq-ft church. Eventually the applicant plans to have as many as 160-180 children using the day care facilities. The proposed hours of operation for the day care are 6:00 AM to 6:00 PM, Monday – Friday. The applicant also proposes to fence in an approximately 8,360 sq-ft area abutting the west and north sides of the church. This area would provide an outside play area for the children. The applicant is considering wrought iron or privacy fencing on the exposed east and south sides of the playground. Staff considers screening of the playground area not necessary because of the pre-existing screening provided by the abutting building on the north (the side closest to "SF-5" zoning and its existing residential development) and west sides of the playground and because of the significant open green space between the play ground and another church on its south side. The east side will eventually be screened by a proposed sanctuary, but now has 385-ft of open space/parking between the playground and Maize Road. Currently the site is under construction, with the church/ day care building nearing completion and utilities being laid. The applicant has provided Staff with site plans and landscape plans that are being reviewed. All drainage and construction plans have been reviewed and approved by Staff.

The neighborhoods to the west and north of the proposed site are zoned "SF-5" Single Family Residential and developed single family residential. The property to the east is zoned "SF-5" Single Family Residential and developed single family residential. Maize Road separates this property to the east from the applicant's site. The property to the south is zoned "SF-5" Single Family Residential and is being developed as a church. The property to the south, which contains a church, was approved for a Conditional Use to operate a "Day Care, General" (CON2001-00015, Fairhaven Christian Church)) by the MAPC March 22, 2001.

CASE HISTORY: The property was platted and recorded as Lot 1, Block 3, Lindsay's Orchard Addition in 1998.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5" Single Family Residential	Residential Housing
EAST:	"SF-5" Single Family Residential	Residential Housing
SOUTH:	"SF-5" Single Family Residential	Church
WEST:	"SF-5" Single Family Residential	Residential Housing

PUBLIC SERVICES: Pawnee Avenue and Maize Road are paved two-lane arterials. There are no average trips per day recorded for this intersection. Municipal water and sewer services are available at this site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this property as appropriate for "low density residential". The current zoning of the site is "SF-5" Single Family Residential, a low residential density. Day Care, General is a conditional use for this residential designation, per the regulations detailed in the WSC Unified Zoning Code.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The Day Care Center shall comply with all applicable state regulations.
2. Outdoor play shall be limited to the hours of 7:30 AM to 6:30 PM.
3. Because this is a nonresidential use, solid screening or a 15-ft wide landscaped buffer shall be provided along the side and rear lot lines, when adjacent to residential zoning/uses. If landscaped buffer provided, the landscape plan must be reviewed and approved by the Planning Director.
4. Solid screening requirement around playground area be waived because of the screening provided by the abutting church/day care building on the north and west sides, the 385-ft of parking and open

space between the playground and the east side next to Maize Road and the 5 acres (Fairhaven Christian Church) between it and the residential use to the south.

5. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The area around the site is zoned "SF-5" Single Family Residential and developed single family residential, with the exception of the church to the south of the site. A church is a permitted use in "SF-5" Single Family Residential zoning.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "SF-5" single family residential. A church is a permitted use in "SF-5" Single Family Residential zoning. The church could operate without a "day care" use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: If the applicant can meet Staff recommendations, the affects on nearby property will be minimal. Staff and the MAPC generally support uses of a church that more fully utilizes it on a daily basis.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan indicates this site is appropriate for low-density residential uses. Given the land uses, zoning and roadways adjoining this site, the request is in conformance with adopted location guidelines for residential uses.
5. Impact of the proposed development on community facilities: The impact of the proposed development will not be beyond the capacity of the existing community facilities.

LONGNECKER "This a request for a Conditional Use to allow Day Care, general, to operate out of a church. This site is located northwest of the Maize Road/Pawnee intersection on 9.9 acres. The zoning around the area is all single-family residential. We heard earlier in the year—in March—a similar request for a day care use for a church (indicating) just south of here. This was granted with conditions recommended by staff.

I would like to keep this fairly brief, so I will go ahead and go right to the recommendation. The staff recommendation is to approve this, subject to the following conditions: The conditions are listed 1 through 5. The only thing on these conditions that is a little out of the ordinary is the solid screening requirement around the playground area be waived. That is because the location of the playground area, which is going to have the screening on the north side and the west side and then you've got 5 acres between it and the single-family residential development to the south. Then you've got over 400 feet across, plus Maize Road—you've got 385 to Maize Road, plus Maize Road from here (indicating), plus there is going to be additional expansion on the church—all this space and proposed development between the day care and the residential to the east. Those are the five conditions that we have put for subject to approval. Are there any questions?"

MICHAELIS "Are there questions for staff?"

GAROFALO "Should the hours of operation be included in the conditions?"

LONGNECKER "In our Zoning Code, we have hours of operation for the playground area, which I have listed—7:30 a.m. to 6:30 p.m. The hours of operation for the proposed day care itself is 6:00 a.m. to 6:00 p.m., Monday through Friday."

GAROFALO "Well, shouldn't that be in the conditions?"

LONGNECKER "We haven't in the past, as far as the hours of operation of the operation itself. In my experience, we have only listed the hours of operation for the playground itself."

KROUT "Right. And I would say that the reason is because day care is something that is in short supply. I think it is related to our workforce that we can supply the change in employment to two and three shifts. Generally if day care wants to provide hours outside the norm, that is something that we generally encourage. So we try to set something like that in our conditions. You might hear it on a case-by-case basis from the neighbors, but we are not recommending it."

MICHAELIS "Is there any further discussion? Are there any questions of staff? Can we hear from the applicant, please?"

ED GOUGE "I am representing the Park Place Assembly of God church. We have no problems meeting the staff recommendations. I know every day we are getting phone calls asking us when we are going to open up. So we feel that there is a big need in that area out there for day care. I will try to answer any questions if you have any."

MICHAELIS "Are there any questions of the applicant? Thank you, sir. Is there anyone else here wishing to speak in favor of this application? Is there anyone wishing to speak in opposition? All right. The public hearing portion of this is closed. I will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood. The area around the site is zoned "SF-5" Single Family Residential and developed single family residential, with the exception of the church to the south of the site. A church is a permitted use in "SF-5" Single Family Residential zoning. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "SF-5" single family residential. A church is a permitted use in "SF-5" Single Family Residential zoning. The church could operate without a "day care" use. Extent to which removal of the restrictions will detrimentally affect nearby property: If the applicant can meet Staff recommendations, the affects on nearby property will be minimal. Staff and the MAPC generally support uses of a church that more fully utilizes it on a daily basis. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan indicates this site is appropriate for low-density residential uses. Given the land uses, zoning and roadways adjoining this site, the request is in conformance with adopted location guidelines for residential uses. Impact of the proposed development on community facilities: The impact of the proposed development will not be beyond the capacity of the existing community facilities.) I move that we recommend to the governing body that the request be approved.

MCKAY moved, **MARNELL** seconded the motion, and it carried unanimously (12-0).

9. **CON2001-00031** – William Mack Hubert; Life Designs c/o Stephen Menke request a conditional Use to allow an accessory apartment on property described as:

Lot 11 and part of Lot 10, described as beginning at the Northwest corner of said Lot 10, thence East 116 feet, more or less, to the Northwest corner of said Lot 10, thence South 16 feet, more or less, to the rear corner common to Lot 8, 9, and 10, thence West to beginning, all in Block 12, Country Acres Second Addition, Wichita, Sedgwick County, Kansas. Generally located northeast of the West School Street and North 10th Street intersection.

BILL LONGNECKER, planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting consideration for a Conditional Use to allow an accessory apartment on property zoned "SF-5" Single Family Residential. An accessory apartment in "SF-5" Single Family Residential zoning requires a Conditional Use Permit. The site, Lot 11& part of Lot 10, Block 12, Country Acres 2nd Addition, is located northeast of the W School Street – N 10th Street intersection. The site/lot's size and configuration is typical for this subdivision, the "part of Lot 10" referred to in the legal description is a narrow wedge shaped addition along its south side that added approximately 1,000 sq-ft to the total lot size. All nearby property is zoned "SF-5" Single Family Residential and is developed as single family residential, with the exception of a public elementary school located west of the applicant's site. The applicant proposes to build a 624 sq-ft guesthouse with a bedroom, a bathroom, living room, and kitchen. The accessory apartment will be one story tall, with a 5/12-pitch gable roof (approximately 13-15-ft at its peak) and vinyl siding. The primary house is approximately 1,300 sq-ft in size. The applicant has submitted a site plan showing the proposed use of the subject property. The site plan shows the location of all existing structures, the proposed accessory apartment and easements. The applicant has indicated that an aging parent will use the accessory apartment as living quarters, but in the long term the applicant will use it for his personal use.

CASE HISTORY: Lot 11 and part of Lot 10, Blk 12, Country Acres 2nd Addition was recorded June 21, 1948.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5" Single Family Residential	Single Family Residence
EAST:	"SF-5" Single Family Residential	Single Family Residence
SOUTH:	"SF-5" Single Family Residential	Single Family Residence
WEST:	"SF-5" Single Family Residential	School

PUBLIC SERVICES: W School Street and N 10th Street are residential roads. There are no traffic counts at this intersection. City utilities are available at this location.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as appropriate for Low Density Residential. Low Density Residential is intended for 1 to 6 dwelling units per acre and provides for the lowest density of urban residential land use. It can consist of single-family detached homes, zero lot line units, cluster subdivisions and planned developments with mixed housing, including townhouse and multi-family units. The Plan encourages accessory apartments in single-family areas to increase affordable housing opportunities and to use land more efficiently.

RECOMMENDATION: Based on the information available prior to the public hearing, staff recommends the application for a Conditional Use for an accessory apartment be APPROVED, subject to platting and the following conditions.

1. The accessory apartment shall be subject to all requirements of Section III-D.6a of the Unified Zoning Code, which includes compatibility of appearance to the primary residence and the neighborhood.
2. The owner of the property shall reside on-site, either in the main home or in the accessory apartment.
3. The applicant shall obtain all applicable permits, including but not limited to building, health and zoning.
4. The owner of the property shall provide at least one off-street, paved parking space, if the occupant of the accessory apartment drives.
5. The site shall be developed in general conformance with the approved site plan and submitted elevations.
6. Any violation of these conditions shall render this Conditional Use Permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The applicant's site and the surrounding area is zoned "SF-5" Single Family Residential. The existing uses are residential, with a school located to the west of the site. The character of the area is distinctly single family residential. Schools are permitted by right in residential zoning.
2. The suitability of the subject property for the uses to which it has been restricted: The Code permits an accessory apartment in single-family residential districts with a Conditional Use provided the site meets specific site and building standards. The applicant and the site appear to meet those standards.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by the recommended condition of approval and code required development standards.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Zoning Code anticipated this type of use and makes specific provisions for it. The site appears to comply with all the provisions outlined in the Code for an accessory apartment. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines.
5. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal.

LONGNECKER "This is a request for a Conditional Use to allow an accessory apartment in 'SF-5' Single-Family residential zoning. This property is located northeast of the west School Street and north 10th Street intersection. The proposed use for this accessory apartment is to provide housing for an aging parent. The applicant has supplied staff with a site plan. The applicant has also supplied staff with elevations of the proposed accessory apartment and a floor plan. We will get right to the recommendations again. We recommend approval of this accessory apartment. We can skip the subject of platting, it is already platted. The 6 conditions are listed on Page 3.

I have also included in your packet, a letter from a neighbor. The reason I put this in there is that these are typical queries about accessory apartments when this use comes about. Usually I get them over the phone, but I thought this was a fairly articulate letter and I would just go ahead and put it in there. The way the accessory apartment is written up for the zoning ordinance, any type of use that would resemble multi-family use would not be permitted by the fact that the owner would either have to be on the property in the accessory apartment, or the primary

structure itself. Are there any questions?"

MICHAELIS "Are there any questions of staff?"

WARREN "On Item No. 1, where we talk about the compatibility of appearance to the primary residence and the neighborhood, Marvin would that come back to you for review of those plans, or would that be done by Central Inspection?"

KROUT "I think it would be done by Central Inspection. If they have a question, they might just contact us."

WARREN "I just wondered how that would be done."

LONGNECKER "May I address Mr. Warren on that issue? (Indicating) There is a picture of the site itself. It is primarily a lap siding structure. The accessory apartment as shown is a lap siding. The only difference is that the lap siding on the accessory apartment is proposed to be vinyl, and this is a composite board."

MICHAELIS "Are there any further questions of staff? Thank you, Mr. Longnecker. Applicant, please?"

STEVE MENKE "I have had the privilege of speaking to you before with other accessory apartments. This would be in the same spirit and general design that we have had on the other accessory apartments. As you recall, the last two we have done have been on Maple Street. This is the same general area. The purpose of doing this is to provide a very dignified alternative to care for older people.

I brought the videotape if anyone wants to watch the videotape. But since we have talked about this several other times, I will just keep my comments very short. I would be happy to entertain any questions."

MICHAELIS "Are there any questions of the applicant? Thank you, Mr. Menke. Is there anyone else here wishing to speak in favor of this application? Please come forward."

BILL HUBERT "This is my residence. My mother has been very active all of her life, but three events occurred in relatively quick succession—No. 1, her purse was snatched, and No. 2, she suffered some minor TIA's, which disoriented her for a short time, enough to make her loose confidence—and then she fell. Having now recovered from the fractures, she simply doesn't have the confidence to return to an apartment complex. At the same time, she is so much better off than her colleagues at this retirement home that I saw a third alternative, and this seems to be ideal. Thank you."

MICHAELIS "Are there any questions of the speaker? Thank you, sir. Is there anyone else wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to? Seeing none, I will bring it back to the Commission."

MOTION: The zoning, uses and character of the neighborhood. The applicant's site and the surrounding area is zoned "SF-5" Single Family Residential. The existing uses are residential, with a school located to the west of the site. The character of the area is distinctly single family residential. Schools are permitted by right in residential zoning. The suitability of the subject property for the uses to which it has been restricted: The Code permits an accessory apartment in single-family residential districts with a Conditional Use provided the site meets specific site and building standards. The applicant and the site appear to meet those standards. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by the recommended condition of approval and code required development standards. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Zoning Code anticipated this type of use and makes specific provisions for it. The site appears to comply with all the provisions outlined in the Code for an accessory apartment. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines. Impact of the proposed development on community facilities: The impact of this development on the community facilities will be minimal.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The accessory apartment shall be subject to all requirements of Section III-D.6a of the Unified Zoning Code, which includes compatibility of appearance to the primary residence and the neighborhood.

2. The owner of the property shall reside on-site, either in the main home or in the accessory apartment.
3. The applicant shall obtain all applicable permits, including but not limited to building, health and zoning.
4. The owner of the property shall provide at least one off-street, paved parking space, if the occupant of the accessory apartment drives.
5. The site shall be developed in general conformance with the approved site plan and submitted elevations.
6. Any violation of these conditions shall render this Conditional Use Permit null and void.

BARFIELD moved, **COULTER** seconded the motion.

MICHAELIS "Is there any discussion."

HENTZEN "I want to make a comment. Not about this, I am going to go along with the motion on this. What I have been thinking of lately is when they want to take care of an aging parent or something like that, we allow them to build a house like this one, put a foundation under it, and all of those things, but then when the parent is gone, what do they do with it? In this case, we are going to restrict it and say 'you can't rent it'. I would like for staff to consider the idea that maybe a small mobile home or something would be a better answer to this particular type of question. And that therefore, as long as it was needed, they could use it, but then it has to be off of the property. Otherwise, we are just going to approve multi-family housing here, and I can't imagine that when the parent dies that the owner wants to use it for nothing, or tear it down. So I am just asking staff to think about that approach to this type of request."

KROUT "No. 1—and the developer who has these units can maybe elaborate—but as I understand it, these are units that are leased and can be demounted and relocated to other sites.

No. 2, the staff recommendation is not to limit this use. The neighbor did express concern in this letter, but the staff recommendation is not to limit this use. The owner may do that, but the staff recommendation does not limit this to only an elderly relative. The staff recommendation says that this is an accessory apartment, just that as one of the conditions that the owner of the property needs to live in one or the other of the units, but the unit can be rented out. We don't have a problem with a second small accessory unit that can be rented out on a lot of 10,000 square feet.

You can add some restrictions to it because we have a different conditional use procedure for mobile homes out in the county, but the unit itself, is placed and developed so that it can be relocated."

HENTZEN "Marvin, you mentioned 10,000 square feet. That lot doesn't have 10,000 square feet, does it?"

KROUT "Yes, I think..."

LONGNECKER "The site is 11,600 square foot."

HENTZEN "Oh, okay. Thank you."

MICHAELIS "Are there any further questions? Thank you, Mr. Longnecker."

VOTE ON THE MOTION: The motion carried unanimously with 12 votes
in favor.

10. **Case No. ZON2001-00037** - Randy D. and Jane F. Wiley (owner/applicant) request zone change from "L" Limited Industrial to "LC" Limited Commercial on property described as:

The North Half of Lots 68 and 70, Texas Avenue, West Wichita Addition. Generally located south of Texas and east of Osage ¼ block.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicants' platted property is zoned "LI" Limited Industrial and is located south of Texas and ¼ block east of Osage. The site is developed with a single-family residence. Residential uses are not permitted uses in the "LI" district, making the residence a non-conforming use. The property is for sale. An individual is

interested in purchasing the home, but due to its non-conforming status, the potential buyer can not obtain a loan. Therefore, the applicants are seeking a rezoning to the "LC" Limited Commercial district which does permit residential uses, and would allow the buyer to obtain a loan.

All surrounding property is zoned "LI" Limited Industrial. Except for the property located to the north, all surrounding property is developed with residential uses. The property located north of the application area, across Texas Street, is developed with a drive-thru bank and bank related parking.

The application area is part of the Delano Neighborhood. A neighborhood plan has recently been adopted for Delano. One of that plan's recommendations is that this property as well as others similarly situated be rezoned to the "LC" Limited Commercial district. "LC" zoning would eliminate the problem this applicant is facing with the sale of the house, but preserve a wide variety of uses, including residential uses. Staff has been and is currently working with neighborhood residents and business owners to implement the plan's recommendations.

CASE HISTORY: The West Wichita Addition was platted in 1872.

ADJACENT ZONING AND LAND USE:

NORTH: "LI" Limited Industrial; bank
SOUTH: "LI" Limited Industrial; residence
EAST: "LI" Limited Industrial; residence
WEST: "LI" Limited Industrial; residence

PUBLIC SERVICES: Municipal sewer and water are available as are all other customarily supplied public services.

CONFORMANCE TO PLANS/POLICIES: As indicated above, the Delano Neighborhood Plan recommends the rezoning of properties that are over-zoned for their current and anticipated uses. The "LC" Limited Commercial zoning district is the zoning district recommended for this property.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. All surrounding land is zoned "LI" Limited Industrial and is used for residential uses or a bank. The character of the area appears to be an older stable residential neighborhood located on the edge of a commercial district.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "LI" Limited Industrial which permits a very wide range of uses, except for residential uses. The site is developed with a single-family residence which make the site's zoning un-suitable for its current use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not have a detrimental affect as the "LC" district is more restrictive than the "LI" district.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: As indicated above, the Delano Neighborhood Plan recommends the rezoning of properties that are over-zoned for their current and anticipated uses. The "LC" Limited Commercial zoning district is the zoning district recommended for this property.
5. Impact of the proposed development on community facilities: None identified as the existing use will remain.

GOLTRY "This is a request to down-zone a property from 'LI' Limited Industrial to 'LC' Limited Commercial. As you can see from the zoning pattern, this is the site where there are single-family residences located, in an area that is currently zoned 'LI'. 'LI' does not permit residential use. This property owner is in the process of selling their property, and they have a buyer for the property. The buyer cannot get a loan because of the prohibition of the residential use in 'LI'. So they are seeking to zone it to 'LC' Limited Commercial.

The surrounding land uses—to the north we have a bank and drive-in facility. To the east, we have residential use; to the south we have residential use; and to the west we have residential use. (Indicating) I believe that is a group residence for women.

You have just completed working on the Delano Plan in conjunction with the Delano Neighborhood Association, where they have recommended that a lot of rezoning occur in the neighborhood to make the zoning more

compatible with the existing uses; so this would be a step toward implementation of the recommendations of the Delano plan. Staff recommends approval, and I will stand for questions.

Oh, let me tell you that I have had two neighbors call about the case. Both were supportive and wanted to know how they could do the same thing."

MICHAELIS "Is the applicant here? Please come forward."

RANDY WILEY "Good afternoon. My wife and I were one day away from closing on this house when we found out that it was zoned as such when the lender for our buyer told us that they could not loan on the house. We had already negotiated closing on that house, had purchased a new home, etc., and we were able to go ahead and use some savings, etc., and get the new home, and we have moved. But we are paying two mortgages right now, and the sooner that we can arrange this and get it straightened out, it will be very helpful to us. I don't know how quickly it can be moved if it does go through and everything is okay, but the sooner, the better. Thank you."

MICHAELIS "Are there any questions of the applicant? Thank you, sir. Is there anyone else here wishing to speak in favor of this? Is there anyone wishing to speak in opposition to? Seeing none, I will bring it back to the Commission."

HENTZEN "I want to ask Donna, does this comply with the Delano Plan?"

GOLTRY "Yes, it does."

HENTZEN "Thank you."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings The zoning, uses and character of the neighborhood. All surrounding land is zoned "LI" Limited Industrial and is used for residential uses or a bank. The character of the area appears to be an older stable residential neighborhood located on the edge of a commercial district. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "LI" Limited Industrial which permits a very wide range of uses, except for residential uses. The site is developed with a single-family residence which make the site's zoning un-suitable for its current use. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request should not have a detrimental affect as the "LC" district is more restrictive than the "LI" district. Conformance of the requested change to the adopted or recognized Comprehensive Plan: As indicated above, the Delano Neighborhood Plan recommends the rezoning of properties that are over-zoned for their current and anticipated uses. The "LC" Limited Commercial zoning district is the zoning district recommended for this property. Impact of the proposed development on community facilities: None identified as the existing use will remain.) I move that we recommend to the governing body that the request be approved.

HENTZEN moved, **JOHNSON** seconded the motion, and it carried unanimously (12-0).

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11. **Case No. ZON2001-00038** — Wesley Medical Center LLC c/o David S. Nevill (Owner/Applicant); Baughman Company PA c/o Russ Ewy (Agent) request zone change from "GO" General Office to "LC" Limited Commercial with a Protective Overlay to limit uses to those permitted by the "GO" General Office district plus hotel or motel.

SCOTT KNEBEL, Planning staff "Commissioners, the applicant has requested that this item be deferred to the July 19 hearing."

MICHAELIS "Is there anyone in the audience that is here to speak on this item? Seeing none, I will entertain a motion for deferral."

MOTION: That the item be moved to the July 19 Planning Commission agenda.

GAROFALO moved, **COULTER** seconded the motion.

MCKAY "I own property abutting this application area, and I will step down from the bench."

MICHAELIS "Is there any other discussion?"

VOTE ON THE MOTION: The motion carried unanimously (12-0).

12a. ZON2001-00028 – Word of Life Ministries c/o Rob Rotola (Owner); Kwik Shop c/o Ed Soper (Contract Purchaser/Applicant); Baughman Company PA c/o Terry Smythe and Classic Real Estate c/o Dick Elliott (Agents) request zone change from "MF-18" Multi-Family Residential and "LC" Limited Commercial, and

12b. CON2001-00023 – Word of Life Ministries c/o Rob Rotola (Owner); Kwik Shop c/o Ed Soper (Contract Purchaser/Applicant); Baughman Company PA c/o Terry Smythe and classic Real Estate c/o Dick Elliott (Agents) request zone change from "MF-18" Multi-Family Residential and "LC" Limited Commercial request a Conditional Use to allow a car wash within 200 feet of a residential zoning district on property described as:

That part of Lot 1, Block 1, Cherokee Sunrise West, an Addition to Wichita, Sedgwick County, Kansas described as follows: Beginning at the Southeast corner of said Lot 1; thence North 00 degrees 10'38" East along the East line of said Lot 1, 45.00 feet to a deflection corner in said East line; thence North 36 degrees 01'38" East as platted, (North 35 degrees 54'31" East as calculated), along the East line of said Lot 1, 54.51 feet as platted (54.43 feet as calculated), to a deflection corner in said East line; thence North 03 degrees 56'31" West along the East line of said Lot 1, 220.00 feet; thence North 90 degrees 00'00" West, 200.15 feet to a point 100.00 feet normally distant East of the East right-of-way line of Meridian Circle as dedicated in said Cherokee Sunrise West, as extended North; thence South 00 degrees 00'00" West parallel with said extended East right-of-way line, 308.00 feet to a point on the South line of said Lot 1; thence South 89 degrees 49'22" East along the South line of said Lot 1, 183.21 feet to the point of beginning. Located on the northwest corner of 37th Street North and Meridian.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

The applicant is requesting a zone change to "LC" Limited Commercial and a Conditional Use to allow a car wash to be located within 200 feet of a residential zoning district. The application area is a 1.4-acre platted tract located at the northwest corner of 37th Street North and Meridian. The site is currently zoned "MF-18" Multi-Family Residential and is vacant.

The character of the surrounding area is mixed, with the K-96/I-235 interchange the predominate feature of the area. Institutional uses are to the north, west, and southeast. Undeveloped commercial property is to the south, and residential uses are to the east and southwest. The current owner (Word of Life Ministries) of the subject property also owns the property to the north and west of the site of the proposed convenience store and car wash to be constructed by the contract purchaser (Kwik Shop). The property north and west of the site is zoned "MF-18" Multi-Family Residential and "LC" Limited Commercial and is developed with church and school buildings. The property to the southeast is zoned "SF-5" Single-Family Residential and is developed with a law enforcement training center. The property south of the site is zoned "LC" Limited Commercial and is undeveloped. The nearest properties developed with residential uses are located approximately 150 feet to the southwest and 175 feet to the east and are zoned "SF-5" Single-Family Residential. The properties developed with residential uses are separated from the subject property by arterial streets.

The attached site plan shows a 3,440 square foot convenience store with 5 gasoline islands and an automatic car wash with dryer. The site plan shows a landscaped buffer along with a screening fence on the north and west property lines and a landscaped street yard along the south and east property lines. The site plan shows the car wash located in the northeast corner of the site with the dryer facing to the east where properties developed with residential uses are located. Therefore, planning staff recommends that approval of the Conditional Use be subject to approval of a final site plan by the Planning Director that relocates the car wash further from properties developed with residential uses and reorients the car wash such that the dryer faces to the north toward the freeway interchange.

CASE HISTORY: The site is platted as part of the Cherokee Sunrise West Addition, which was recorded April 16, 1982. The zoning of the site was changed (Z-2369) from "AA" One-Family to "R-5" General Residence (now "MF-18" Multi-Family) on April 27, 1982. A request for "C" Commercial zoning (Z-2589) along with a Community Unit Plan (DP-137) was denied on May 15, 1984. A variance (BZA 19-99) was granted August 24, 1999 to permit a 96 square foot sign for the church and school that owns the subject property.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-18" School
SOUTH: "LC" Undeveloped
EAST: "SF-5" Single-Family
WEST: "LC" Church

PUBLIC SERVICES: The site has frontage to Meridian, a five-lane arterial; however, complete access control has been platted along the Meridian frontage. The site also has access to 37th Street North, a two-lane arterial the ends ½ block to the west of the site. The Traffic Engineer has indicated agreement with the two access drives proposed for 37th Street North. Along the site's frontage, 37th Street North currently carries approximately 1,500 vehicles per day. The 2030 Transportation Plan does not estimate the traffic volume for 37th Street North west of Meridian. East of Meridian, 37th Street North currently carries approximately 5,000 vehicles per day and is projected by the 2030 Transportation Plan to increase to 10,000 vehicles per day. Meridian currently carries approximately 10,000 vehicles per day and is projected by the 2030 Transportation Plan to increase to 18,000 vehicles per day. The 2030 Transportation Plan assumed the subject property would develop with commercial uses in calculating these projected traffic increases. Municipal water and sewer services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The car wash shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
- B. The applicant shall submit a revised site plan for approval by the Planning Director, prior to the issuance of the Conditional Use resolution, that relocates the car wash further from properties developed with residential uses and reorients the car wash such that the dryer faces to the north toward the freeway interchange.
- C. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- D. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is mixed, with the K-96/I-235 interchange the predominate feature of the area. Institutional uses are to the north, west, and southeast. Undeveloped commercial property is to the south, and residential uses are to the east and southwest. The area currently has "LC" Limited Commercial zoning both south and west of the subject property. The nearest properties developed with residential uses are located approximately 150 feet to the southwest and 175 feet to the east.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-18" Multi-Family Residential, which accommodates moderate density, multi-family residential development. Given the site's location at an arterial intersection and its limited size, it is unlikely that the site will develop with a multi-family residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the screening, lighting, and compatibility standards of the Unified Zoning Code and the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, which should limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the subject property is separated from existing residential properties by arterial streets, which should further limit detrimental affects on nearby properties.
4. The length of time the subject property has remained vacant as zoned: The subject property has remained vacant as zoned for almost 20 years.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials. This site has frontage along Meridian and 37th Street North, which are both arterial streets. The Commercial Locational Guidelines also recommend that commercial

sites should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, and landscaping requirements should minimize any adverse impacts on surrounding residential areas.

6. Impact of the proposed development on community facilities: The arterial streets in the area currently have the number of lanes recommended by the 2030 Transportation Plan, which assumed the site would be developed with commercial uses when calculating future projections of traffic volume. Other community facilities should not be adversely impacted.

KNEBEL "This item is a request for rezoning and a Conditional Use. The applicant is seeking Limited Commercial zoning and a Conditional Use. The intention is to develop the property with a convenience store—a Kwik Shop—with a car wash. You have several site plans, one that is attached to the staff report and a couple of others that have been handed out that I will go over with you in a minute that show the proposed layout of the site. As far as the existing area, it is located at 37th and Meridian and Womer. The area is very near the interchange of I-235 and K-96. It shows that there is residential and institutional uses in the area plus some undeveloped ground.

There is a school to the north—also the interchange; there are residential properties to the east; a law enforcement training center to the southeast; vacant commercial property to the south; residential to the southwest, and a church to the west.

The Planning staff has recommended that this request be approved, essentially subject to a revised site plan, which has been passed out. The applicant's original site plan showed the car wash located in the northeast corner of the property, facing toward the residential property on the east. They have subsequently submitted a revised site plan, which moves the car wash to the northwest corner and changes its orientation such that the dryer now faces to the west, towards the church. Staff is recommending yet a third orientation that faces the car wash to the north to an area where there are no residential properties. The findings for this recommendation are on Pages 4 and 5. Oh, I should mention that the District Advisory Board did hear this request last night, and recommended it for approval, subject to the revised site plan that the applicant submitted. It is a site plan that is dated June 14. I am available for questions."

MICHAELIS "Are there any questions of staff? May we hear from the applicant, please?"

TERRY SMYTHE "I am here on behalf of the applicant, which is the Kwik Shop. We had the DAB meeting last night. A number of the neighbors showed up and we had some very good discussions about some concerns they have with facilities they have up there, including drainage issues and traffic concerns—that kind of stuff. We have a 5-2 vote in favor of this from the DAB members. We have with us today, Ed Soper, who represents Kwik Shop and we also have some information on the dryers. There were some concerns when we first had the site plan that you see in your packet. The car wash was closer to the east property line than it is now. As a concern for some of that, we decided to shift the dryers and the car wash over closer to the west side. The information we have today would indicate that the noise that comes off of these dryers, after about 50 or 60 feet away from the dryer is less than the noise you would have on an arterial street. We don't think that the issue of noise is really an issue, quite frankly.

Staff did put out an idea of a relocated site plan in which the dryer faced north/south. With prevailing winds coming out of the north and south, the Kwik Shop doesn't feel that that is a good use for the car wash, so we kind of kept it in an east/west direction. We just moved it as far away as we could from the homes across Womer. The distance separation from the face of the car wash relocated on that last site plan and the back yards of some of the houses across Womer is over 300 feet, so we are confident that noise will not be a factor. Those folks have done a very good job of isolating themselves up against that highway with landscaping and fencing. We have some additional landscaping that was pretty much in front of what used to be the dryer/carwash door to try to prevent any view through that car wash, if there is one. The DAB approved it 5-2. I have information on the dryer if you need it. If not, I will stand for questions.

In addition, we have the representative from the church, if there are any questions. The church is the current owner of the property."

MICHAELIS "Are there any questions of the applicant?"

GAROFALO "I just want to make this clear. (Holding up site plan) This is the site plan you are pushing?"

SMYTHE "You make it sound bad! That is the site plan that we are requesting approval on, yes."

GAROFALO "Well, you are pushing it, too. At a quick glance, the only difference I see is the direction the cars are going to be moving in."

SMYTHE "Yes, and the building itself is being moved west. The car wash building itself is being moved about 80 feet to the west."

MICHAELIS "And the landscaping."

MCKAY "I have nothing to do with this one, but I do own some Kwik Shop locations, so I probably ought to step down."

KROUT "It isn't necessary unless you are paid by them, but if you feel like you should step down."

BISHOP "This may be a really dumb question....where is north on here? I am trying to make it fit with this, and I am not getting it done."

MARNELL "I believe you have Meridian Street wrong on the drawing."

BISHOP "No wonder."

SMYTHE "Are you saying I have made a mistake already this year? No, that's correct. Are you looking at the secondary drawing?"

MARNELL "It's north and south, isn't it?"

SMYTHE "Thirty-seventh Street is on the south...."

MARNELL "It's on the south end, yeah, but Meridian is on the left, not on the right."

WARNER "No, it's not."

SMYTHE "Okay. That came up last night and we had great discussion about it. Technically, Womer is the intersection and Meridian is the residential street to the west at that particular location. If you go further on north up towards the Moorings, then it is Meridian. But when it comes through that particular area, then it becomes Womer."

BISHOP "Okay."

KROUT "Terry, is the applicant going to talk about the question of noise and the dryers?"

SMYTHE "I could have him do that."

KROUT "Yes, I would like to have him do that. Unless there are other questions of Terry."

MICHAELIS "Are there any other questions of Mr. Smythe? Okay."

ED SOPER "Good afternoon. I am the Director of Real Estate with Kwik Shop. Mr. Krout has some questions and I would be glad to answer those and any anybody else has."

KROUT "Do you know what the noise levels will be at within 20 feet?"

SOPER "Yeah, on the dryer side, which we have now turned and faced the west, 20 feet outside the door is 92 decibels; 85 at 30. And on the last sheet of that, it gives you a comparison on how those decibels rank, compared to street noise; a circular saw. We are basically in the average street traffic within 30 feet of the facility."

KROUT "Do you ever measure noise on the other side?"

SOPER "Yes, the entrance side is less. Thirty feet out is 79 decibels."

KROUT "And do you have distances beyond 30 feet?"

SOPER "It reduces. We can get that."

KROUT "Do you have like a chart or something? I would be interested because this issue comes up all of the time."

SOPER "Sure. I would be glad to get it for you. I can't guarantee that all car washes will have the same. This is a very state-of-the-art facility. We just installed one out at Goddard. Some of you may have gone out there. If you

would like to see a picture of it, we can pass that around. It is a very high-tech car wash."

MICHAELIS "Are there any further questions of the applicant? Thank you, sir. Is there anyone else in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to? Seeing none, I will bring it back to the Commission."

BARFIELD "I have a question for Scott. You have a revised drawing and then you have the staff recommended drawing. Is your recommendation for approval based on the staff recommended drawing?"

KNEBEL "That is correct."

WARNER "I have a comment, if I may, concerning the staff's recommendation on having that car wash run north and south. I am in the car wash business, and in Kansas, you are better off if you don't have the opening of your facility running with the wind running through it. It freezes in the wintertime and blows stuff everywhere—you over spray everywhere. If you are concerned about the noise from the blower, it is going to blow that noise a lot further towards the residence on the south then the way they recommend having it, running east and west."

So, I recommend that we go with not with the staff recommendation on the direction of that car wash."

MARNELL "I am ready to make a motion, but first I want to make a comment. I appreciate the fact that the folks brought scientific evidence and information on the decibel levels because we have had too much emotion about dryers and vacuums at car washes, and it becomes 'I don't like this', or 'I think it would' instead of scientific data, which does exist. I think this gives a good comparison and it is good information—the kind of thing we should base judgment on."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the surrounding area is mixed, with the K-96/I-235 interchange the predominate feature of the area. Institutional uses are to the north, west, and southeast. Undeveloped commercial property is to the south, and residential uses are to the east and southwest. The area currently has "LC" Limited Commercial zoning both south and west of the subject property. The nearest properties developed with residential uses are located approximately 150 feet to the southwest and 175 feet to the east. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "MF-18" Multi-Family Residential, which accommodates moderate density, multi-family residential development. Given the site's location at an arterial intersection and its limited size, it is unlikely that the site will develop with a multi-family residential use. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the screening, lighting, and compatibility standards of the Unified Zoning Code and the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance, which should limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the subject property is separated from existing residential properties by arterial streets, which should further limit detrimental affects on nearby properties. The length of time the subject property has remained vacant as zoned: The subject property has remained vacant as zoned for almost 20 years. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials. This site has frontage along Meridian and 37th Street North, which are both arterial streets. The Commercial Locational Guidelines also recommend that commercial sites should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, and landscaping requirements should minimize any adverse impacts on surrounding residential areas. Impact of the proposed development on community facilities: The arterial streets in the area currently have the number of lanes recommended by the 2030 Transportation Plan, which assumed the site would be developed with commercial uses when calculating future projections of traffic volume. Other community facilities

should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. The car wash shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
- B. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- C. Any violation of the conditions of approval shall declare the Conditional Use null and void.

MARNELL moved, **JOHNSON** seconded the motion.

MICHAELIS "Is there any discussion on the motion?"

VOTE ON THE MOTION: The motion carried with 11 votes in favor.
McKay abstained.

HENTZEN "I do want to call attention to this letter that says 'our needs with the development of this area, our property values would also go up'. God, I've never read that before! I appreciate the author of that."

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13. **A 01-11** The City of Wichita seeks the annexation of properties generally located north of 21st street North and east and west of Hoover Road.

MICHAELIS "We just need a motion finding that this is in conformance with the Comprehensive Plan."

MOTION: That the Metropolitan Area Planning Commission find that the unilateral annexation is compatible with the adopted Comprehensive Plan.

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14. **DR2001-07** — Public Hearing on amendments to the April 19, 2001 edition of the Wichita-Sedgwick County Unified Zoning Code.

DONNA GOLTRY, Planning staff, "This is basically the same information that we talked about on an informal and not-advertised-as-a-public-hearing basis a month ago. I am just bringing it back to you again for reconsideration for a formal public hearing.

On the packets that you received recently, I have two small changes to suggest that should be made. If you would turn to Page 3, the last paragraph under 'Vehicle storage yard' where it talks about recreational vehicles, it should have said 'unoccupied recreational vehicles', so please insert the word 'unoccupied' in the draft proposal.

On Page 4, if you look down toward the bottom of the page where we are talking about the storage of vehicles and equipment in the County, 12a1—I have talked with the County Counselor's office and they have suggested that the word 'permitted' is misleading because what is actually happening in Section 19-22.C of the Sedgwick County Code is that they are prohibiting inoperable vehicles from storage unless they conform with screening requirements and so a more appropriate term is to slash the word 'permitted' and insert the word 'screened', and the statement would then read 'motor vehicles that are screened as specified in Section 19-22.C of the Sedgwick County Code'. I will verify with Aaron that I have explained that where it is understandable.

There is a typographical error, not in the proposed zoning text, but on Page 5 where it says 'Section 1h.3, it should have been Section 7i. We are talking about the rewriting of the registration of non-conformities. The main change on the registration of non-conformities is, as we talked about last time, that we would be doing language that would allow registration to happen at any time rather than be required within 1 year of the non-conformity or exemption being created. So I think that it is a lot more legible, and I want to thank Joe Lang for drafting this language. I think it really clarifies on registration of non-conformities. I will stand for questions."

MICHAELIS "Are there any questions for staff?"

PLATT "Does the Advance Plans Committee recommend that we adopt this language?"

GOLTRY "We haven't met on that."

KROUT "We have talked about the concept, but we haven't seen the language."

MCKAY "it is what we talked about. I have a question. Is this for adoption today, or just notification for a public hearing?"

KROUT "We were told by the attorney's office that we had to do a rehearing, depending on the comments that you have today and how much energy you have left. You could decide to vote today or you could defer discussion and the vote until the next meeting."

MICHAELIS "Then this is a public hearing on this."

MCKAY "It is a public hearing for this? Okay."

MICHAELIS "Yes, it is. Are there any further questions of staff? Is there anyone in the audience wishing to speak on this item? Please come forward."

CHARLES PEASTER "I live at 9453 North 135th Street West in Sedgwick County, Kansas. They have just recommended on Page 4, under 'motor vehicles that are permitted', they want to put the word 'screened'. I would suggest that you put the word 'comply'. It would say 'motor vehicles that comply as specified in Section 19', rather than 'screened'. I think it is a better word than screened. That is all I have. Thank you. Are there any questions? I would be happy to answer them."

MICHAELIS "I think that would make more sense to me. Is legal-wise the problem on that?"

AARON BLASE, County Legal Department "The reason I suggested deleting the word 'permitted' is that Section 19-22C is the Nuisance Code of Sedgwick County, which says that inoperable vehicles are not permitted, but that section is an exception to that general rule and allows inoperable vehicles if they are screened as set forth in that section. So what this section that you are looking at would do—the intention be to allow the storage of operable and inoperable vehicles. So if you say 'as permitted', in reference that section, that section does not permit the storage of operable vehicles. It only allows the storage of inoperable vehicles. So to use the word 'screening' references this screening standards in Section 19-22C. As long as they are screened as provided in that section, then they are permitted, so 'comply' isn't an appropriate term either. I think to use either the words 'permitted' or 'complied' would not be accurate."

PEASTER "I have a question of Mr. Blase, then. If that is screened, then what he is saying is that even the operable vehicles are going to have to be screened. They haven't had to be in the past. Is that not what you gentlemen just heard?"

MCKAY "I think so."

BLASE "Operable vehicles are currently being permitted to be stored for greater than 72 hours outside of an enclosed structure. So what this would be to allow, as an accessory use, the outdoor storage of operable vehicles in the County, so long as they are screened as provided in this section. Whereas right now, that is not permitted."

MICHAELIS "Okay. Next speaker."

JOHN DAILEY "Thank you for the opportunity to speak again. My address is P.O. Box 3081, Valley Center. I have a question on the parking and mainly the registration. If you will notice on the sheet attached, it is a long sheet. I have color-coded, in green and pink, what I am particularly speaking of. In the County Commission meeting of May 9, Marvin Krout stated that there were no intentional changes made by this Code. I refer to, and it has the minutes of that meeting there on the long sheet, marked in pink. I want to point out there that he continues to say 'if they have, most probably inadvertently, because we tried very hard not to do that'. And in the very last line there, on Page 4, he says that if they did, then these are not considered to be non-conforming."

Well, if they are not considered to be non-conforming, these Zoning Department still wants you to register them. Something should be worded to the effect, or the Zoning Department told about this that if they are not considered non-conforming, then you should not have to fill out the paper for the non-conformities, which is in this Item No. 14.

By changing some of the definitions, Donna in her presentation said there, that there have been problems created. The zoning may not have changed, or their intent may not have changed, but they changed the definitions; therefore it changed the meaning of what you could do, what and where. One case here, on Page 4, at the very top of the page, it talks about wrecking and salvage yards. On the second line, 'primarily' has been marked out. Well, a wrecking yard is used primarily for that purpose. It is a commercial purpose that you are doing this for

business and 'primarily' is appropriate there. Because if you mark out that word 'primarily' then even a body shop, if they were taking a car to take parts off of it to use on something else, you could say that they were a wrecking yard because they are taking parts off of that car. You are not going down there and buying them; you are taking parts off of the car to resell to the customer. So I think you should leave that word 'primarily' in there. And even changing a headlight in your car in your driveway—changing a tire—you could interpret it that you are doing this if you don't have the word 'primarily' in there. That means you are doing it for a business, you are there for that purpose. It just doesn't happen to be happening in your driveway, or in some other businesses' driveway, taking parts off.

On Page 3, at the very bottom, the definition of 'vehicle storage', this started changing after the 1996 book was written and that is the main reference point—the registration became important there. In the 1996 book, the vehicle storage yard was just called 'storage yard', and then there was also a definition of 'vehicle storage'. But in the 1996 book, and I think you should go back and compare these definitions and actually go back to what they really started with, and quit try to sneak out of some definition.

The term 'storage yard' in 1996 permitted inoperable vehicles. That was the main difference between the definitions that are used now. You cannot, in a vehicle storage yard, park the inoperable vehicles. I'll bet you have places, these rental places that have inoperable vehicles in them. You just don't know about it. That was permitted in Light Industrial in 1996. Then, by changing the definition in 1997, it was no longer permitted. You can only park a car in there that runs.

Okay, the elimination of the deadline was a good idea because you were getting 4 or 5 years down the line, but the way it is worded, it still gives the administrator too much authority and allows personal bias to come in there. I think there should be guidelines set up by this committee to give what you have to accept. If you go down there and try to present this little form sheet that they give you, they just automatically deny it and say you don't have enough proof. If you set up some guidelines—and this needs to be worked on, these guidelines, where they have to. You don't need to go to the Board of Zoning Appeals and by putting this in—this is the last comment on Page 6—the staff did not recommend incorporating specific guidelines. Well, it should have some in there that you do accept these guidelines, and if you need to go to the Board of Zoning Appeals, you still can do this. There should be a purpose, which would help be a guideline, too, of the registration, stated in this of why we need to register things, such as to help property owners have a record of what their rights are. I hope it wouldn't be like to repress landowners and take their rights away and they don't know their rights are being taken away. If you would ask them to put a purpose of this—define it—why—just put it in there, then we could tell what it was."

MICHAELIS "Mr. Dailey, your time is up. Do you need some additional time?"

MOTION: That the speaker's time be extended for 2 minutes.

WARREN moved, **MCKAY** seconded the motion, and it carried unanimously.

DAILEY "Thank you. Article VII, Sec. VII-h says, and it has been in there for several years that the landowner has the burden of proof. This is not the American way of doing things. If you don't have proof, you are up the creek. This should be changed to if the landowner had some evidence, take his word for it. Take his statements and his neighbor's statements and not just say 'no, we are not going to trust you that that is the way it was'. If the zoning has definite evidence, if he has neighbors, if he has photos—whatever evidence—to conflict with the landowner's statements, then you can turn it down, but if there is no proof at all, there should be no reason why the Zoning Administrator should just say 'no, I am just not going to accept that.

Records should be kept so that the public can readily find out information about all of the properties. On the green sections where I have highlighted on the minutes, Commissioner Norton had some questions about this, saying 'I was wondering, with the registration, do we have a data base that we could pull up'. Mr. Krout didn't know and said he would ask about this. If they do, you may ask him if he would like to comment on that. If you will read Commissioner Norton's comments, you would get my idea. Are there any questions?"

MICHAELIS "Are there any questions of the speaker? Okay. Is there anyone else wishing to speak on this item? Please come forward."

KELLY WENDELN "My address is Box 1817 Wichita. I am going to hand out some papers. We are short of papers, so would some of you please double up on these?"

Thank you for including screening in the Zoning Code. I think this is the right thing to do to protect private property rights. The County approved a screening before 1997, and the County is requiring screening in the future. I would like to ask you to consider making screening retroactive. Because zoning does not presently approve of screening, and because of over-zealous enforcement over the last four years, property owners are being fined hundreds of dollars in county courts as recently as two weeks ago.

There is an example in the handouts on Page 3. I am sure that the County Counselor Aaron Blase would not like retroactive screening because he likes to win cases. Perhaps Mr. Blase would like to address you on this. Screening has been legal in the past and will be in the future. Let's have consistency here. Do you know of any reason why retroactive screening should not be included in the Zoning Code? Thank you. Are there any questions?"

MICHAELIS "Are there any questions of the speaker? Thank you, sir. Is there anyone else wishing to speak on this item? Okay, then, we will close the public hearing and bring it back to the Commission."

MCKAY "On Mr. Dailey's handout, on the next to the last paragraph, it talks about the Zoning Administrator, if he has no credible evidence, he can just turn it down. That is just part of the system. If he turns it down, the applicant has the right to go to the Board of Zoning Appeals for an open public hearing. Mr. Dailey didn't bring that up, but that is part of the system."

MICHAELIS "Okay. I would like to call the County Counselor back up. You are way more familiar with this than any of us. Has anything that has been presented by these speakers influenced any of your thinking or should we consider changing any of the verbiage in this?"

BLASE "No. Nothing that I have heard has changed my opinion on what you should do."

MICHAELIS "Okay, thank you. Is there any other discussion? Commissioners, we can do one of two things. We can vote on adopting this or we can vote on deferring it and giving it some more thought. But I think this has gone on longer than the Comprehensive Plan did, hasn't it?"

MCKAY "I can attest to that after the 7:30 a.m. meetings."

MOTION: That the Metropolitan Area Planning Commission approve the amendments to the Zoning Code with the changes as presented.

MCKAY moved **PLATT** seconded the motion.

WARREN "In the overall correction of these Codes and amendments, is this just a portion of it? Do we have another group of amendments that are coming in?"

KROUT "This is the last of them."

WARREN "So this is the last. Okay."

MCKAY "We have approved everything else."

VOTE ON THE MOTION: The motion carried unanimously with 12 votes in favor.

MICHAELIS "Are there any other matters?"

PLATT "I just want to thank all of you for being my colleagues for the past four years that I have been doing this. I wish you success in the future. I want to thank the staff of the Planning Department for the great support they have given the Commission. I have had fun."

MICHAELIS "I would like to speak on behalf of myself, and I think the rest of the members of the Commission as well, and thank you for your time and the dedication you put in. You obviously put a lot of effort into this over time. I think we all sincerely appreciate it."

The Metropolitan Area Planning Commission unofficially adjourned at 5:00 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do

hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2001.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)